

Countryside and Rights of Way Panel

Friday 10 December 2021

10:00

Council Chamber, County Buildings, Stafford

The meeting will be webcast live which can be viewed at any time here:

<https://staffordshire.public-i.tv/core/portal/home>

John Tradewell
Director of Corporate Services
2 December 2021

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 12 November 2021** (Pages 1 - 2)
4. **08 November 2019 meeting item no 119.**
5. **Wildlife and Countryside Act 1981 - Application for an alleged Public Bridleway between Trent Walk and Fiddlers lodge** (Pages 3 - 40)

Report of the Director for Corporate Services.
6. **Wildlife and Countryside Act 1981 - Application for the addition of a Public Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre** (Pages 41 - 70)

Report of the Director for Corporate Services.
7. **Wildlife and Countryside Act 1981 - Application for the addition of a Public Bridleway from Hanyards Lane to Ingestre and to upgrade Public Footpath 0.1630(b) to a Public Bridleway** (Pages 71 - 96)

Report of the Director for Corporate Services.
8. **Exclusion of the public**

The Chairman to move:-

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

Part Two

(All reports in this section are exempt)

9. **Exempt minutes of the meeting held on 12 November 2021** (Pages 97 - 98)

(Exemption paragraph 2, 6a & 6b)

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

Verbal update of the Director of Corporate Services.

(Exemption paragraph 2, 6a and 6b)

Membership

Jak Abrahams
David Smith
Paul Snape

Jill Waring
Mark Winnington (Chairman)

Notes for Members of the Press and Public

Filming of Meetings

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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
12 November 2021**

Present: Mark Winnington (Chairman)

Attendance	
David Smith	Jill Waring
Paul Snape	

Apologies: Jak Abrahams

PART ONE

39. Declaration of Interest in accordance with Standing Order 16.2

There were no Declarations of Interest on this occasion.

40. Minutes of meeting held on 08 October 2021

RESOLVED – That the minutes of the meeting held on 08 October 2021 be confirmed and signed by the Chairman.

41. Wildlife and Countryside Act 1981 - Application for the addition of an Alleged Public Right of Way from Ivetsey Road to Bellhurst Lane, Wheaton Aston

Item Deferred.

42. Wildlife and Countryside Act 1981 - Application for the upgrading of Public Footpath 34 Grindon to a Restricted Byway

The Panel considered a report of the Director of Corporate Services regarding an application from Mr B Smith for a modification order under Section 53 of the Wildlife and Countryside Act 1981 for the upgrade of Public Footpath 34 Grindon to a Restricted Byway.

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) plan of the claimed route (ii) Cary map dated 1787 (iii)

Ordinance Survey map (iv) Various old maps (v) Grindon Tithe Award dated 1839 (vi) Waterfall Tithe Award dated 1846 (vii) Bartholomew map dated 1902 and 1924 (viii) Statement accompanying the draft map (ix) Grindon Parish Record Card dated 1952 (x) Landowner questionnaire (xi) Letter of objection from Grindon Parish Council and landowners.

The Panel decided that the available evidence was sufficient to conclude that on the balance of probabilities a Restricted Byway along the line of Public Footpath No 34 Grindon subsisted and therefore should be added to the Definitive Map and Statement of Public Rights of Way as such.

DECISION - That (a) the evidence submitted by the applicant and that discovered by the County Council was sufficient to show that, on the balance of probabilities, a Restricted Byway exists along the line of Public Footpath No 34 Grindon

(b) an Order be made to add the alleged Restricted Byway to the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

43. Exclusion of the public

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

44. Exempt minutes of the meeting held on 08 October 2021

(Exemption paragraph 2, 6a & 6b)

45. Wildlife and Countryside Act 1981, Section 53 Modification Order Applications - Update

(Exemption paragraph 2, 6a & 6b)

Chairman

Local Members' Interest		
Cllr J Francis	Stafford- Valley	Stafford Trent

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

**Application for an alleged Public Bridleway between Trent Walk and Fiddlers Lodge
Report of the Director for Corporate Services**

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that the alleged public bridleway between Trent Walk and Fiddlers Lodge subsists.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked A to B to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Bridleway.

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 as a member of the Ramblers Association 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 Bridleway from Trent Walk to Fiddlers Lodge, Stafford to the Definitive Map and Statement 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 Bridleway 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. The applicant has submitted in support of his claim evidence of a Quarter Session Order dated 1801 and a plan for diverting a highway in the parish of Ingestre.
2. The Quarter Session Order dated 1801 sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall and turned the bridleway onto a new line leading to a point on the Stafford and Uttoxeter Turnpike Road which is now the A518, Weston Road near the County Showground.
3. The text of the order describes the original bridleway as running from Hopton to Stafford. The original route passed in front of Ingestre Hall from Dog Kennel Gate to Tixall Gate and thence passed Hanyard terminating at Halfway House. From that junction to reach Stafford it would have passed along what is now Tixall Road to come out on the A518, now called Weston Road terminating at the same point as it currently does.
4. By way of identification and orientation the feature on the map showing a bow in Tixall Road is still in existence. Weston Road was at the time of the Order part of the Turnpike Road from Stafford to Uttoxeter. Copies of the original order and the accompanying map are attached at Appendix C. Officers have transcribed the text of the Order and a copy of the transcript is attached at Appendix D.
5. A length of some seven hundred and thirty-nine yards of the old bridleway was to be stopped up, this being the section from Dog Kennel Gate to Tixall Park Gate. The bridleway was to be diverted onto a new line which took the bridleway from the end of Dog Kennel Gate in a north-westerly direction and then looping round to terminate on the A518, through where the land now occupied by the County Showground. This route was to be some two thousand six hundred and twenty-six yards in length. A map showing the lines of the routes set out on the Order Map has been produced to assist in identifying the line of the ways on a current Ordnance Survey map and is attached at Appendix E.
6. Earl Talbot, in a deposition that accompanies the order, describes the original bridleway as running from a place called Trent Walk which later in the missive is described as being located at the end of the bridge over the River Trent. On the Order Plan Trent Walk is shown written above the line of the route running towards the River Trent.
7. The Earl then specifically consents to the new bridleway being made through his lands and that he is to have the land that the old route ran over sold to and vested in him. He goes on to declare that he will maintain the new bridleway and that the bridge he has erected over the River Trent will be a Public Bridle Bridge that he will also maintain.
8. A certificate of completion accompanies the Order stating that the Justices were satisfied that the new bridleway was fit for purpose and ordered that the land over which the extinguished part crossed be given to the Earl in compensation for the new route over his lands.
9. The road on the Order Map runs from Ingestre in a northwestwardly direction then turns northeastwardly to join Trent Walk and thence northwestwardly again towards the northern part of the park.
10. The Ingestre Estate Diversion Plan was contained within the papers of the Chetwynd Estate of Earl Talbot comprising correspondence to and from his agents. The Plan is entitled "Sketch of the Roads about Ingestre intended to be diverted". The map is not to any scale but does show the various roads in the area including the way from Trent Walk over the river bridge towards Amerton. A copy of the plan is attached at Appendix F.

Other evidence discovered by the County Council

11. Officers have conducted research into historical documentation and copies of an order extinguishing a non- definitive bridleway have been discovered alongside a creation order for a bridleway that is now included on the Definitive Map and Statement as Hopton and Coton 19. The extinguishment affected the final section of the route set out in the 1801 Quarter Session Order stopping it up completely. The effect of the Creation Order was to substitute a new line. Copies are attached at Appendix G.

Evidence submitted by the Landowners

12. A number of the landowners have submitted a relatively large amount of evidence but none of the evidence refutes the 1801 Quarter Session Order.

Comments received from statutory consultees

13. The Ramblers Association support the application and believe that this bridleway should be included on the Definitive Map. They state that it provides a direct link between existing bridleways across the Ingestre Estate. It links with the bridleway recently created as part of the diversion of FP19 in the parish of Hopton & Coton. They have not submitted any specific evidence which supports or refutes the application.
14. Stafford Borough Council responded to the application stating that they have no comments to make on the proposal.
15. The Peak and Northern Footpaths Society responded stating that they have no evidence for or against the application.
16. Hixon Parish Council stated that they have no comment to make on the application.
17. Copies of the above correspondence are attached at Appendix H.

Comments on Evidence

18. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.
19. The combination of the Order and the attached plan provides a fairly accurate description of the path intended to be diverted and the new bridle path. In particular the Order refers to the stopping up of a small section of the lane running between "Dog Kennel Gate" and "Tixall Park Gate", both of which are marked on the Order Plan. There is no reference to any other part of the old bridleway being stopped up.
20. The Order clearly sets out that the old bridleway is to be diverted and turned in consideration for the new route so as to make the same more commodious to the public. The use of the word commodious is taken to mean that it would be to the public benefit as in more advantageous or easier to use.
21. The Order Plan shows the diverted route as going passed Birch Hall Farm, towards and passed the Old Lodge Covert, through to Hopton Heath where it joined the Stafford to Uttoxeter Turnpike road.
22. The consent states that the bridge over the River Trent is to be maintained by the Earl of Talbot and used as a public bridle bridge as part of the diversion, clearly implying

that the full length of Trent Walk and the bridge at that time were to be public bridleways. The implications of whether those routes ought to be added to the Definitive Map and Statement is addressed in a separate report.

- 23.** What the consent does show is that the Earl intended for there to be a network of public bridleways in place from the direction of Hoo Mill which lay to the south passing through Dog Kennel Gate and thence to pass by Trent Walk and the bridge over the Trent and on to the Turnpike Road.
- 24.** Turnpike Roads were public highways but ones upon which a toll was levied for use by horse and cart. They were established under Acts of Parliament during the eighteenth and nineteenth centuries and often took over existing main highways using the proceeds of tolls or monies raised on the future revenue to improve what were at the time rapidly deteriorating ways. The main road from Stafford to Uttoxeter would have been typical of such types of highway.
- 25.** The fact that the new bridleway is longer and would entail a lengthier journey time does suggest that the route being more commodious is misleading. Rather one could speculate that the purpose might have been to move the public highway that passed directly in front of the Earl's dwelling leading to more privacy for the Earl. Of course the latter is not a valid reason for a diversion either at that time or today.
- 26.** Despite the intent of the Order being open to question and that the route does not seem, on the face of it, to be more commodious, it still has legal effect. The time to challenge the order was when it was made. In the absence of such, and given it was subsequently confirmed it has legal effect.
- 27.** The Order has been examined by Dr D Fowkes, FSA, a consultant archivist and historical researcher. Dr Fowkes states in his letter that "there is no doubt that the length of bridleway stopped up is only the 739 yards in front of the Hall" in substitution of a much longer section of route through the earl's own land away from the Hall. A copy of the letter from Dr Fowkes is attached at Appendix I.
- 28.** If one considers the old bridleway it is apparent that it ran in front of the Hall from the Tixall Park Gate to Dog Kennel Gate and thence towards Trent Walk. There is also a route shown from Ingestre leading to Dog Kennel Gate.
- 29.** The new bridleway, whilst the Order mentions it as commencing from the end of Trent Walk, also encompassed that part of the old way not stopped up, that is from Dog Kennel Gate to Trent Walk. The bridleway in its entirety would therefore be from the direction of Ingestre through Dog Kennel Gate to Trent Walk and then along the line of the newly created bridleway towards Hopton Heath.
- 30.** No Orders or other documentation have been discovered to suggest that the bridleway between Trent Walk and Fiddlers Lodge or from Dog Kennel Gate to Trent Walk have ever been the subject of an Order extinguishing any public highway rights.
- 31.** In the absence of any contrary evidence the existence of the diversion Order, the landowner consent and confirmation Order all provide strong evidence that the public bridleway still exists.
- 32.** In summation the effect of the order therefore is that the diverted bridleway in its entirety, from Trent Walk to Hopton Heath, remains a public bridleway.
- 33.** The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with current road layout. The map at Appendix E shows the overlay corresponding closely with the network and so some reliance can be placed upon it when considering a plan of the diverted routes and those that remained.

34. The Ingestre Estate Diversion Plan is not to scale but does show the routes that crossed the Earl's lands, and which were diverted as part of the order.
35. The effect and weight of the estate plan would under usual circumstances be considered to have less evidential value than an OS map. At best it is a record of physical features that the estate agent believed existed.
36. In this case the probative value is enhanced by the existence of the 1801 Diversion Order. The plan was drawn up before the Order was made, certainly at least a year beforehand or given the papers date from 1792 to 1800, the intent may have existed for a greater time period. It is the fact that the intent was actually carried out by seeking an Order from the Justices that adds to the evidential weight.
37. In addition, in 1995 an Order was made to create a length of bridleway in the parishes of Hopton & Coton and Ingestre with Tixall. This length of bridleway commenced at Fiddlers Lodge, at the A518 Stafford and connected to Public Footpath 18 Hopton & Coton. This route was then diverted to the County Showground.
38. At the time the diversion was made, there were no objections to the Order. Staffordshire County Council were satisfied that the bridleway existed despite not being on the Definitive Map and Statement and therefore proceeded to divert a non-definitive way. The Order could only be confirmed if Staffordshire County Council were satisfied the bridleway existed based upon the balance of probabilities. As it was confirmed this must have been the case. There was no evidential material submitted in objection nor any evidence discovered which would suggest the Quarter Session Order had been overturned or that it never came into force or to refute it in any way.
39. If the council were satisfied that this section of the bridleway still existed based upon the Quarter Session Order then that must apply to the entirety of the route. Therefore, adding further weight to the existence of bridleway rights along the alleged route and the evidential value of the Quarter Session Order.

Comments on report

40. Following circulation of the report comments were received from the landowner, Mr Tavernor of Birch Hall Farm. He is of the opinion that it is difficult to accurately determine precisely what occurred under the 1801 Order. He goes on to say that the Quarter Session Order is open to interpretation and the maps are not clear. The letter from Dr Fowkes only confirms the length of route that was stopped up but doesn't offer any insight into the alternative route's exact location, only saying that it runs through the Earl's estate, which could be anywhere on the Ingestre Estate. He advises that there is a gatehouse along Trent Drive and people needed to seek permission to pass through. Finally, he states that when the estate was sold the route has always been private. And from the Estate Diversion Plan it is clear that a number of routes were intended to be diverted. There is no mention of the direction of the alternative route or where it terminates, there is no map that clarifies this. Whilst Mr Tavernor's comments were noted, officers opinion remains that the 1801 Order does adequately confirm the line of the alleged route and therefore officer's opinion remains unchanged. A copy of Mr Tavernor's comments and a copy of officer's response is attached at Appendix J.

Burden and Standard of Proof

41. 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.
42. 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.
43. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
44. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land must by definition be less than that which is necessary to establish the right of way “does subsist”.
45. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

46. Quarter Session Orders can often be relied upon their own to prove the status and public nature of a route. The orders made by the Justices of the Peace were Court Orders, which could only be overturned by another court or by statute.
47. After the 1773 Highways Act these Orders could also widen, divert and extinguish routes. In the case of a diversion, this did not take effect until the new route was laid out and certified by the Justices as being satisfactory.
48. In this case, the diversion Order, the confirmation Order and the landowner consent all provide strong evidence that a public bridleway exists along the alleged route, particularly when compared with the current road layout, which corresponds closely with the network. In addition, there is no evidence of a further legal event having taken place that overrode the Quarter Session Order dated 1801 or that it did not take effect, therefore it can be relied upon to prove the status and public nature of the route.
49. In relation to the Ingestre Estate Diversion Plan it supports the physical existence of the alleged route and considering the date of the plan, it shows the intent for the diversion of a public bridleway, which when reviewed alongside the 1801 Diversion Order, which confirms that the diversion took place, along the lines of the alleged route, adds to the evidential weight of the evidence.

Conclusion

50. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
51. When the totality of the evidence is considered, the evidence does satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public bridleway subsists.

52. The evidence provided by the Quarter Session Order and the Ingestre Estate Diversion Plan is good evidence and there is no contrary evidence to show that the diversion did not take legal effect. This absence of conflicting evidence could be taken to mean that the application has passed the test on the balance of probabilities.
53. When the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
54. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of bridleway, which is not shown on the map and statement subsists.

Recommended Option

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

Other options Available

56. To reject the application and refuse to make an Order to add the claimed way to the Definitive Map and Statement.

Legal Implications

57. The legal implications are contained within the report.

Resource and Financial Implications

58. The costs of determining applications are met from existing provisions.
59. 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

60. 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.
61. 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.

62. 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.
63. 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

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

J Tradewell

Director for Corporate Services

Report Author: Hannah Titchener

Ext. No: 854190

Background File: LE624G (a)

INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Original copy of the Quarter Session Order dated 1801 and accompanying map
Appendix D	Transcript of the Quarter Session Order dated 1801
Appendix E	Justice Order Plan 1801 Routes overlayed on the Definitive Map
Appendix F	Ingestre Estate Diversion Plan
Appendix G	Copy of Public Path Order- Creation Order 1994- creation of public bridleway.
Appendix H	Copies of correspondence from statutory consultees
Appendix I	Copy of correspondence from Dr Fowkes- archive consultant and historical researcher
Appendix J	Copy of Mr Tavernor's comments on draft report and officer's response.

FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of WOLVERHAMPTON INLEINE WITH TIXALL

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

I/We MARTIN REAY, AS A MEMBER OF RAMBLERS ASSOCIATION
of 53 TITHE BARN RD STAFFORD

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

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

* ~~adding the (footpath)(bridleway)(byway open to all traffic)~~
from TRENT WALK - 984254 to FIDOLETS LODGE - 962257

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

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

and shown on the map accompanying this application.

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

*delete as appropriate.

List of Documents

QUARTER SESSION ORDER 1802

CONSENT OF PLAN FOR DIVERTING
A HIGHWAY IN THE PARISH OF
INGERSIDE.

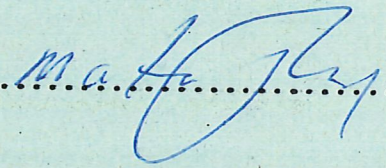
PLAN OF DIVERSION INCLUDED.

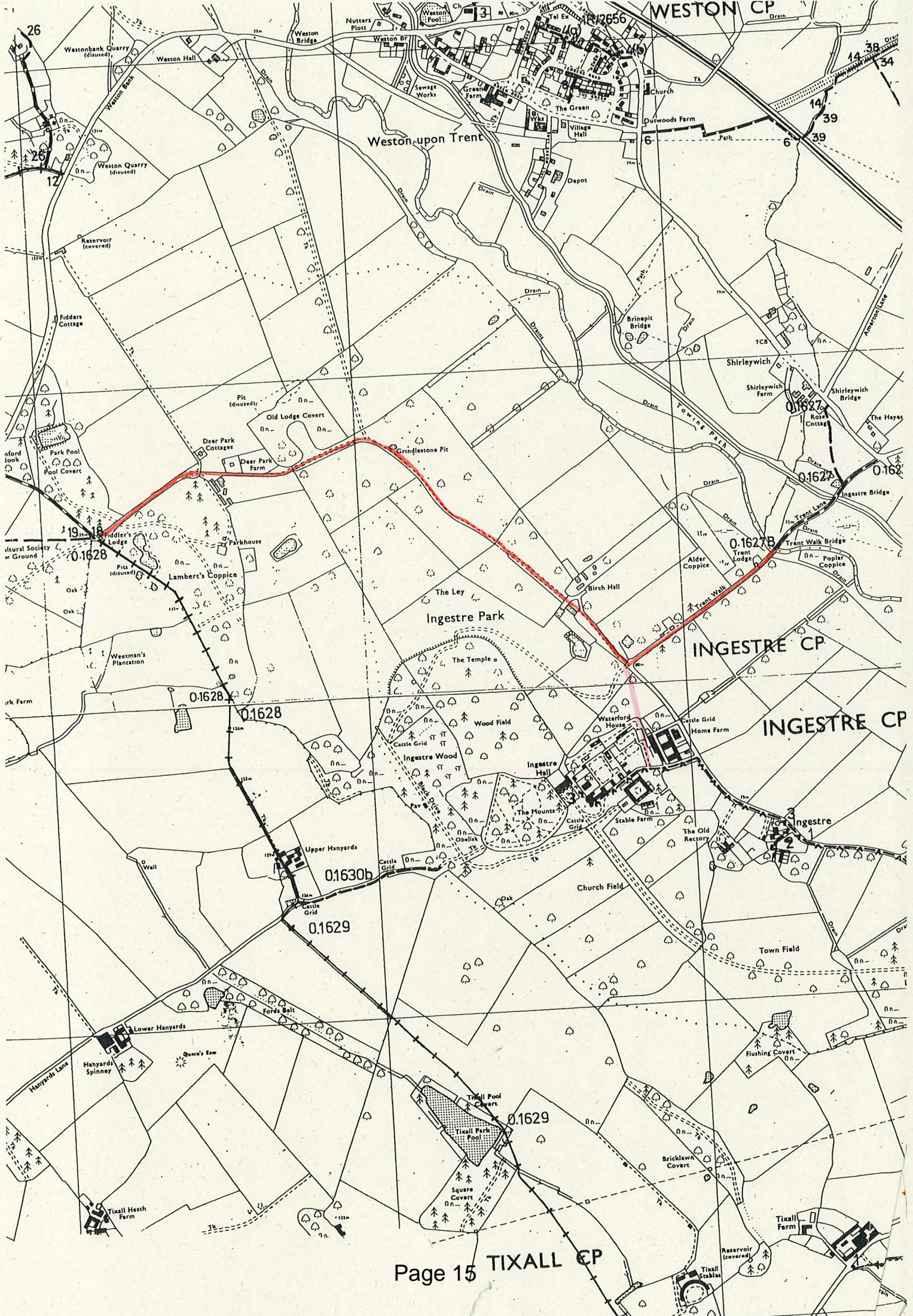
Date

6/3/96

19 96

signed.....



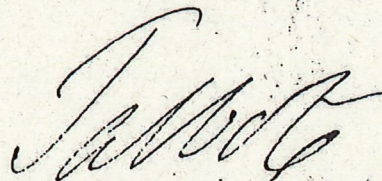


Weston-upon Trent

INGESTRE CP

INGESTRE CP

I Charles Pheloupe Earl Talbot being owner of the lands described in the Plan herewith annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre park and the Stafford and Mtonster Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me (Do hereby consent to the making such new Bridleway through my said lands - And I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the Bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and Seal the first — Day of November 1801 -




We whose names are hereunto subscribed being the Justices
of the peace who have viewed the several Bridleways describe
in the plan hereunto annexed and made an order for
diverting the Old Bridleway and being satisfied that the
new Bridleway therein described is properly made and fit
for the reception of Travellers. Do hereby order that that
part of the said Old Bridleway being of the length of 739
yards or thereabouts be stopped up and the land and soil
thereof given to the Right Honourable Charles Chetwynd
Earl Talbot for his own private use as a recompence
and satisfaction of the land taken from him for the
purpose of making such new Bridleway. Dated this first
Day of January — in the year of our Lord 1802.

Sparrow
J. Higgins

Staffordshire) We John Sparrow Esq. and Lambroke Higgins (but two of
his Majesty's Justices of the peace for the said County at a
special sessions held at Bickton — in the Hundred
of Birchill south in the said County the first — day of
November — in the year of our Lord 1801 — having upon view
found that a certain part of a Bridleway from Hop-ton to
Stafford lying within the Parishes of Ingestrie in the said
Hundred between a place called the Dog Kennel Gate and
Tixall park Gate of the length of seven Hundred and thirty
nine yards or thereabouts and particularly described in the
plan hereunto annexed may be diverted and turned so as to
make the same more commodious to the public & having
viewed the course proposed for the new Bridleway in
lieu thereof through the lands and grounds of the right
Honourable Charles Cheswold Earl Talbot of the length
of two Thousand six Hundred & twenty six yards and of the
breadth of eight feet and having received evidence of the
consent of the said Earl to the said new Bridleway being
made through his lands by writing under his hand
and seal. We do hereby order that the said Bridleway be
diverted and turned through his said lands accordingly —

Sparrow
Lambroke Higgins

Justices Order and plan for the stopping up and diversion of part of a bridle way from Hopton to Stafford dated 1801, Earl of Talbots dedication of new bridleway and bridle bridge dated 1801 and certificate of completion dated 1802. (Transcript)

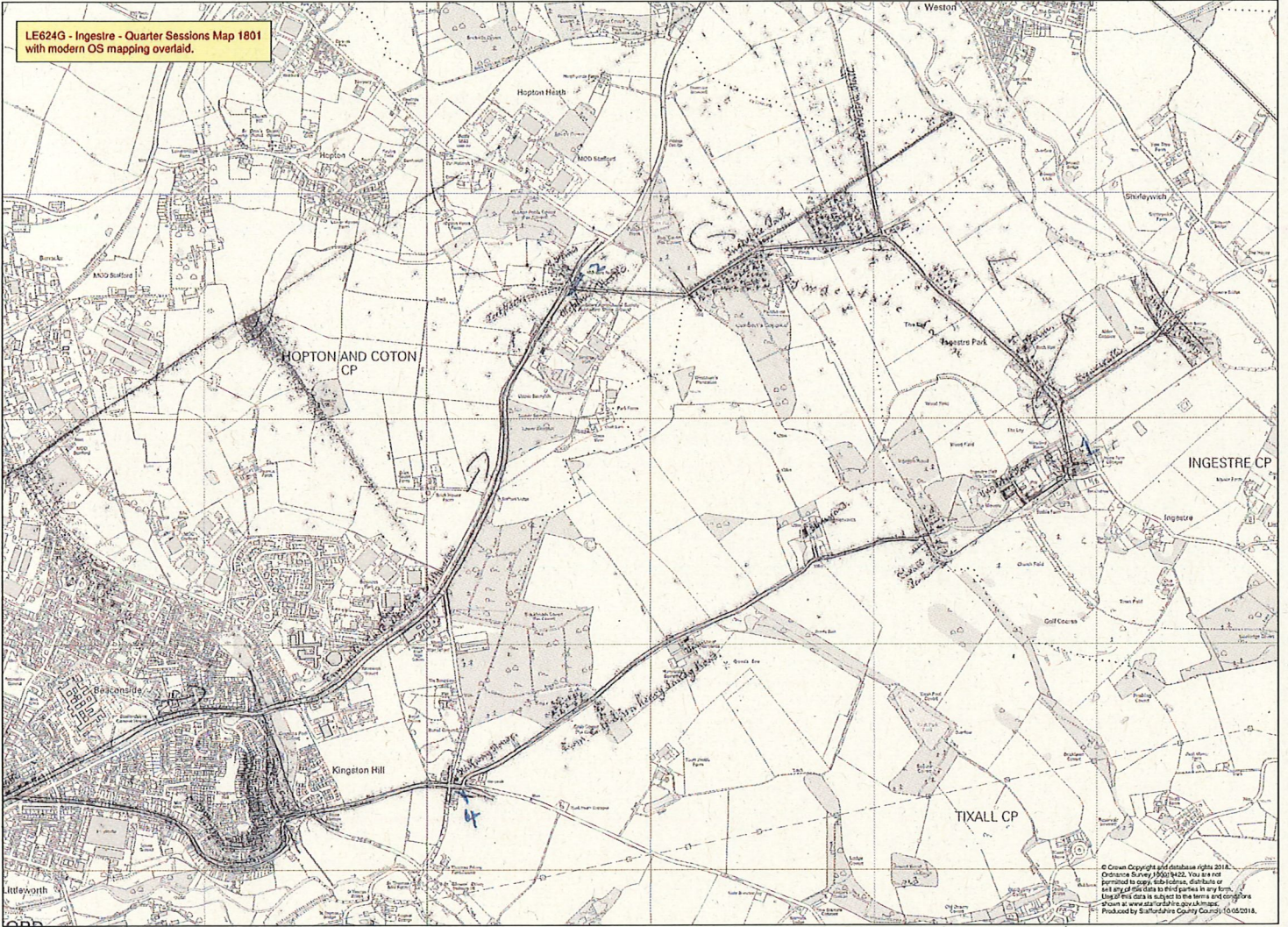
We John Sparrow Esq and Sambroke Higgins Esq two of his majesty's Justices of the Peace for the said County at a special sessions held at Bishton in the Hundred of Pirehill South in the said County the first day of November in the year of our Lord 1801- having upon view found that a certain part of a Bridleway from Hopton to Stafford lying within the Parish of Ingestre in the said Hundred between a place called the Dog Kennel Gate and Tixall Park Gate of the length of seven hundred and thirty nine yards or thereabouts and particularly described in the plan hereunto annexed may be diverted and turned so as to make the same more commodious to the public and having viewed the Course proposed for the new Bridleway in lieu thereof through the Lands and Grounds of The right Honourable Charles Chetwynd Earl Talbot, of the length of two thousand six hundred and twenty six yards and of the breadth of 8 feet and having viewed evidence of the consent of the said Earl to the said new Bridleway being made through his Lands by writing under his hand and seal We do order that the said Bridleway be diverted and turned through his said lands accordingly.

I Charles Chetwynd Earl Talbot being owner of the Lands described in the Plan hereunto annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre Park and the Stafford and Uttoxeter Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me Do hereby consent to the making such new bridleway through my said lands – And I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and seal the first day of November 1801

We whose names are hereunto subscribed being the Justices of the Peace who have viewed the several bridleways described in the plan hereunto annexed and made an order for diverting the old Bridleway and being satisfied that the new Bridleway therein described is properly made and fit for the reception of travellers. Do hereby order that this part of the said old Bridleway being of a length of 739 yards or thereabouts be stopped up and the land and soil thereof given to the Right Honourable Charles Chetwynd Earl of Talbot for his own private use as a recompense and satisfaction of the land taken from him for the purpose of making such new bridleway. Dated this first day of January in the year of our Lord 1802.

Signed J Sparrow

Sambroke Higgins



Sketch of the Roads about
Augustus intended to be
described

0240 | E | C | 1 | 29 | 33

NOTICE OF CONFIRMATION OF PUBLIC PATH ORDER

HIGHWAYS ACT 1980

Staffordshire County Council (Public Bridleway Hopton & Coton and Ingestre with Tixall Parishes) Public Bridleway Creation Order 1994

On 3 April 1995, Staffordshire County Council confirmed the above order made under section 26 of the Highways Act 1980.

The effect of the order as confirmed is to create a length of bridleway as follows:-

(a) Hopton and Coton Parish

commencing from the A518 Stafford - Uttoxeter Road due south of Pool Cottage (point A) running in a generally northerly direction for 88 metres (point F) then in an east south-easterly direction along the southern boundary of fields OS 8367 and 0055 for 367 metres (point E) then east north-easterly along the track for 134 metres to connect with the south western end of footpath No19 and the non-definitive bridleway (point B) then in a generally easterly direction, along the northern boundary of field OS 1533 for 17 metres to the Parish boundary, west south-west of Fiddlers Lodge (point D).

(b) Ingestre with Tixall Parish

a contiguous length of bridleway commencing at the Parish boundary (point D) running in a generally easterly direction along the northern boundary of field OS 2435 for 15 metres to connect with the north western end of Bridleway No 0.1628 adjacent to Fiddlers Lodge (point C)

as shown on the order map. The new bridleway will have a minimum prescribed width of 3 metres.

A copy of the order as confirmed and the order map have been placed at Baswich Branch Library, Lynton Avenue, Stafford and the offices of Staffordshire County Council, County Clerk & Chief Executives Dept, Martin Street, Stafford during normal working hours, Mondays to Fridays. Copies may be purchased.

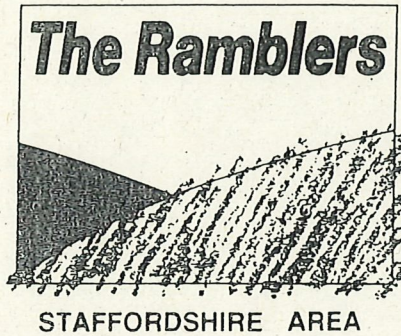
The order comes into force on **1st May 1995**, but if a person aggrieved by the order wants to question its validity, or that of any provision contained in it, on the ground that it is not

within the powers of the Highways Act 1980, as amended, or on the grounds that any requirement of the Act, as amended, or of any regulation made under the Act has not been complied with in relation to the order he or she may under paragraph 2 of Schedule 2 to the Act as applied by paragraph 5 of Schedule 6 to the Act, within six weeks from the date of publication of this notice make an application to the High Court.

Dated 7th April 1995

B.A.Price
County Clerk & Chief Executive
County Buildings,
Martin Street
Stafford

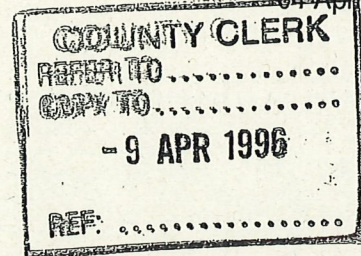
19/13/1/767



The Ramblers' Association promotes rambling, protects rights of way, campaigns for access to open country and defends the beauty of the countryside.

34, Greenfield Road,
STAFFORD
ST17 0PU

04 April 1996



Your Ref: 4/MWB/jg 19/11/156
My Ref: BRADBRY1.WPS

B A Price Esq.,
Chief Clerk and Chief Executive,
Staffordshire County Council,
P.O Box 11,
M...n Street,
STAFFORD
ST16 2LH

For the attention of Mr M W Bradbury

Dear Mr Bradbury,

Wildlife and Countryside Act 1981
Alleged Public Bridleway between Trent Walk and
Fiddlers Lodge, Ingestre

Thank you for your letter dated 11th March 1996.

This association supports this application and believes that this bridleway should be included on the definitive map. It provides a direct link between existing bridleways across the Ingestre Estate. It links with the bridleway recently created as part of the diversion of FP 19 in the parish of Hopton & Coton.

There is another missing link through the Ingestre Estate linking the footpath 0.1630b in Tixall parish and footpath 3 in Ingestre parish. In your investigations for this bridleway, you discover any evidence for this footpath then we will be very pleased to support the addition of that footpath as well.

I hope this is satisfactory and we look forward to the new bridleway.

Yours sincerely,

David Palmer
Area Footpath Secretary, Staffordshire Area

HOPTON AND COTON PARISH COUNCIL

Clerk: Alistair Mochrie, Hillcrest, Hopton Bank, Stafford ST18 0AH
Tel/Fax: Stafford (01785) 253717. E-mail downsbank@yahoo.co.uk

Alan Wallis LL.B (Hons)
Deputy Corporate Director (Law and Administration)
Resources Directorate
Staffs County Council
15 Martin St.
Stafford
ST16 2LC

21 NOV 2005

For the attention of Miss S Fraser

Your ref: 4/SF/LE624G
19th November 2005

Dear Miss Fraser

Wildlife and Countryside Act - Alleged Bridle Ways.

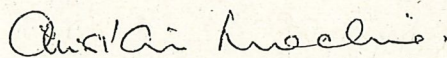
Thank you for your letter dated 15th November 2005 regarding the alleged bridleways in the Parishes of Hopton and Coton/Tixall and Ingestre.

I respond in respect of the paragraph in your letter relating to the public footpath between the A518 (Weston Road and Fiddlers Lodge), shown as footpath No. 19 on the Definitive Map. This is the only right of way referred to in your letter which is within Hopton and Coton Parish. All other references lie within Tixall and Ingestre.

In the sense that the right of way does not cross Parish Council land and is not vested in the Parish Council for maintenance, then my Council make no comment regarding its reclassification to footpath/bridleway. The land is utilised by the Staffordshire Showground from time to time as parking for exhibitors at organised events.

I have to say that on the information provided it is very difficult to accurately determine precisely what had occurred under the 1801 Order.

Yours sincerely


Alistair Mochrie
Clerk

COUNTY CLERK
REFER TO
COPY TO
12 APR 1996
REF:

PEAK & NORTHERN FOOTPATHS SOCIETY

061 483 2482

DATE: 18th March 1996

1, NELSON STREET
HAZEL GROVE
Stockport,
Ches.
SK7 4LR

OUR REF & DESCRIPTION

042-230 Alleged footpath
Alleged public bridleway between
Trent Walk & Fiddlers Lodge
Ingestre

DEPT: 70
YOUR REF: A/MB/jg 19/11/56
GRID REF:

SOCIETY'S DECISION/RECOMMENDATION

The society has no evidence either for or against
the above claim.

FURTHER COMMENTS

L. Sp...

STAFFORDSHIRE COUNTY COUNCIL
PO BOX 11, COUNTY BLDGS
MARTIN STREET
STAFFORD
ST16 2LH



Stafford Borough Council

F

Civic Offices, Riverside, Stafford, ST16 3AQ Telephone 223181 (01785)
Fax No. 223156 (01785)

Town Clerk and Chief Executive's Department
J. K. M. Krawiec, LL.B., Solicitor,
Town Clerk and Chief Executive

My Ref DS.5/1/GP/BLW Your Ref 4/MWB/JG 19/11/150 Date 5 April 1996

Dear Sir,

ALLEGED PUBLIC BRIDAL PATH BETWEEN TRENT WALK AND FIDDLERS LODGE,
INGESTRE

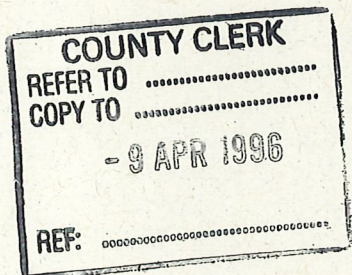
I refer to your letter dated 11th March, 1996, together with
enclosures.

I have no comments to make on this proposal

Yours faithfully,

JK M Krawiec

Town Clerk and Chief Executive



B.A. Price, Esq., M.A., D.M.S.,
County Clerk and Chief Executive,
Staffordshire County Council,
P.O. Box 11,
County Buildings,
Martin Street,
Stafford.
ST16 2LH

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11

11

DR. D.V. FOWKES, FSA

**CONSULTANT ARCHIVIST
HISTORICAL RESEARCHER**

Sarah Fraser,
Resources Directorate,
Staffordshire County Council

29th October 2005

Yr.ref: 4/SF/LE624G

Dear Miss Fraser,

**WILDLIFE AND COUNTRYSIDE ACT 1981: ALLEGED PUBLIC
BRIDLEWAY BETWEEN TRENT WALK AND FIDDLERS LODGE,
INGESTRE, AND ALLEGED PUBLIC BRIDLEWAY BETWEEN
HANYARDS LANE AND INGESTRE PARISH BOUNDARY**

Thank you for your letter of 25 October.

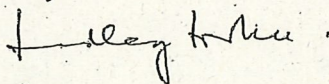
I can see no reason why this stopping-up order is not as straightforward as it appears. Presumably Earl Talbot was fed up with the general public passing in front of Ingestre Hall so persuaded his fellow justices to stop up the section of the Stafford-Ingestre bridleway in front of the house and substitute a much longer section of route through his own land but away from the Hall. The substitution of a greater length of route may have been presented as a magnanimous gesture but it of course resulted in a substantially longer route from Ingestre to Stafford via Hopton, rather than the shorter Hanyards route.

There is no doubt to me that the length of bridleway stopped up is only the 739 yards in front of the Hall from Dog Kennel Gate to Tixall Park Gate. The length fits in very well with the accurate modern maps if you relate it to the scale. The residue of the bridleway from Littleworth to Hanyards is not affected by the Order and presumably continued as a bridleway serving Hanyards but of no use as a through route.

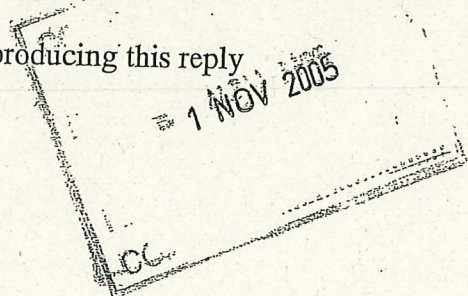
I hope these remarks are helpful and help to solve whatever the current issue is.

I enclose an invoice for £20-00 for considering the matter and producing this reply which I hope is acceptable.

Yours sincerely



Dudley Fowkes



Local Members' Interest		
Cllr J Francis	Stafford- Valley	Stafford Trent

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of a Public Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicants and that discovered by the County Council is sufficient to show that a Public Bridleway which is not shown on the Definitive Map and Statement subsists.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked C to D to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Bridleway.

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 Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre 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 Bridleway which are the subject of the application are shown highlighted and marked C – D 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 originally submitted an application but then sought to amend the application by commencing the route from the highway north of Stable Farm (byway No 3) to the west end of Trent Walk, Ingestre.
2. In support of his application, Mr Reay has submitted evidence of a Quarter Session Order dated 1801 and Estate maps of Ingestre.
3. The Quarter Session Order dated 1801 sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall and turned the bridleway onto a new line leading to a point on the Stafford and Uttoxeter Turnpike Road, which is now the A518, Weston Road near the County Showground.
4. The text of the order describes the original bridleway as running from Hopton to Stafford. The original route passed in front of Ingestre Hall from Dog Kennel Gate to Tixall Gate and thence passed Hanyard terminating at Halfway House. From that junction to reach Stafford it would have passed along what is now Tixall Road to come out on the A518, now called Weston Road, terminating at the same point as it currently does.
5. By way of identification and orientation the feature on the map showing a bow in Tixall Road is still in existence. Weston Road was at the time of the Order part of the Turnpike Road from Stafford to Uttoxeter. Copies of the original order and the accompanying Map are attached at Appendix C. Officers have transcribed the text of the Order and a copy of the transcript is attached at Appendix D.
6. A length of some seven hundred and thirty-nine yards of the old bridleway was to be stopped up, this being the section from Dog Kennel Gate to Tixall Park Gate. The bridleway was to be diverted onto a new line which took the bridleway from the end of Dog Kennel Gate in a north-westerly direction, which is the subject of this report and then looping round to terminate on the A518, through where the land now occupied by the County Showground, which is subject to a separate report. This route was to be some two thousand six hundred and twenty-six yards in length. A map showing the lines of the routes set out on the Order Map has been produced to assist in identifying the line of the ways on a current Ordnance Survey Map and is attached at Appendix E.
7. Earl Talbot, in a deposition that accompanies the order, describes the original bridleway as running from a place called Trent Walk which later in the missive is described as being located at the end of the bridge over the River Trent. On the Order Plan Trent Walk is shown written above the line of the route running towards the River Trent.
8. The Earl then specifically consents to the new bridleway being made through his lands and that he is to have the land that the old route ran over sold to and vested in him. He goes on to declare that he will maintain the new bridleway and that the bridge he has erected over the River Trent will be a Public Bridle Bridge that he will also maintain.
9. A certificate of completion accompanies the Order stating that the Justices were satisfied that the new bridleway was fit for purpose and ordered that the land over which the extinguished part crossed be given to the Earl in compensation for the new route over his lands.
10. The road on the Order Map runs from Ingestre in a northwestwardly direction then turns to northeastwardly to join Trent Walk and thence northwestwardly again towards the northern part of the park.
11. The Ingestre Estate Diversion Plan was contained within the papers of the Chetwynd Estate of Earl Talbot comprising correspondence to and from its agents. The Plan is

entitled "Sketch of the Roads about Ingestre intended to be diverted". The document is part of a series of papers dated from 1792 to 1800.

12. The plan shows the road that was diverted on the 1801 Order as well as the new route. The map is not to any scale but does show the various roads in the area including the way from Trent Walk over the river bridge towards Amerton. A copy of the Plan is attached at Appendix F.

Evidence submitted by the Landowners

13. A number of the landowners have submitted a relatively large amount of evidence but none of the evidence refutes the 1801 Quarter Session Order.

Comments received from statutory consultees

14. Ingestre with Tixall Parish Council responded to the application stating that two members of the Parish Council have a direct interest in the alleged bridleway and therefore they do not wish to comment. A copy is attached at Appendix G.

Comments on Evidence

15. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.
16. The combination of the Order and the attached plan provides a fairly accurate description of the path intended to be diverted and the new bridle path. In particular the Order refers to the stopping up of a small section of the lane running between "Dog Kennel Gate" and "Tixall Park Gate", both of which are marked on the Order Plan. There is no reference to any other part of the old bridleway being stopped up.
17. The Order clearly sets out that the old bridleway is to be diverted and turned in consideration for the new route so as to make the same more commodious to the public. The use of the word commodious is taken to mean that it would be to the public benefit as in more advantageous or easier to use.
18. The consent states that the bridge over the River Trent is to be maintained by the Earl of Talbot and used as a public bridle bridge as part of the diversion, clearly implying that the full length of Trent Walk and the bridge at that time were to be public bridleways.
19. What the consent does show is that the Earl intended for there to be a network of public bridleways in place from the direction of Hoo Mill which lay to the south passing through Dog Kennel Gate and thence to pass by Trent Walk and the bridge over the Trent and on to the Turnpike Road.
20. The fact that the new bridleway is longer and would entail a lengthier journey time does suggest that the route being more commodious is misleading. Rather one could speculate that the purpose might have been to move the public highway that passed directly in front of the Earl's dwelling leading to more privacy for the Earl. Of course the latter is not a valid reason for a diversion either at that time or today.
21. Despite the intent of the Order being open to question and that the route does not seem, on the face of it, to be more commodious, it still has legal effect. The time to challenge the order was when it was made. In the absence of such, and given it was subsequently confirmed it has legal effect.

22. The Order has been examined by Dr D Fowkes, FSA, a consultant archivist and historical researcher. Dr Fowkes states in his letter that “there is no doubt that the length of bridleway stopped up is only the 739 yards in front of the Hall” in substitution of a much longer section of route through the earl’s own land away from the Hall. A copy of the letter from Dr Fowkes is attached at Appendix H.
23. If one considers the old bridleway it is apparent that it ran in front of the Hall from the Tixall Park Gate to Dog Kennel Gate and thence towards Trent Walk. There is also a route shown from Ingestre leading to Dog Kennel Gate.
24. The new bridleway, whilst the Order mentions it as commencing from the end of Trent Walk, also encompassed that part of the old way not stopped up, that is from Dog Kennel Gate to Trent Walk and is the route subject of this report.
25. It would appear that the Earl of Talbot allowed the route from Dog Kennel Gate to Trent Walk as part of the diversion, making an illegal diversion by changing the angle of the route and that people used the route as part of the bridleway network surrounding Ingestre Park. There is no conclusive evidence from the Quarter Session Order that this part of the route had any rights extinguished and when reviewed in conjunction with the Ingestre Estate Plans there appears to be an intention that this part of the route would be used by the public as a bridleway, connecting with the new diverted bridleway to Hopton and connecting to Trent Walk, which also appears to have bridleway status due to reference being made to a Bridle Bridge along this stretch of way and over the River Trent.
26. Although, specific reference is not made to this route in the Quarter Session Order it can be argued that the Earl of Talbot dedicated the route to the public under common law. The Earl of Talbot as landowner, had the capacity to dedicate and as the route ran through his land, any use by the public is likely to have been brought to the attention of the Earl. There is no evidence that anyone questioned the angle at which the route was at.
27. There is no evidence to suggest that the Earl took any action, such as erecting locked gates or putting up notices to stop the public using this section of route and it would appear that the alleged route was also intended to form part of the bridleway network. Therefore, it can be argued that the Earl would have been aware of any usage of the way as a bridleway and this use was accepted. Furthermore, there is no evidence in the Order that this part of the route was legally extinguished.
28. Whilst it is difficult to ascertain the exact line for the alleged route, the evidence has settled on the line marked on the map at Appendix B and marked C- D and the evidence suggests that this route was used as a bridleway at the discretion of the Earl of Talbot. The alleged route now passes at an angle through properties that have been built in recent years. Due to the age of the historical documentation and the development of new housing in the area of the alleged route, as stated it has been difficult to ascertain the exact line the alleged route would have taken at the time of the 1801 Order. However, overlaying the Order Map onto a modern Ordnance Survey Map has assisted in providing an accurate summation in where the route lay.
29. In the case of R (on the application of Roxlena Ltd) v Cumbria District Council it was determined that it was not lawful for a council to reject a recommendation for adding a route to the definitive map and statement because there was insufficient evidence of the alignment of the new rights of way on the map, particularly where it was impossible to discern from available evidence with sufficient precision where the route would run on the ground. It was stated: “The obligation on the surveying authority is to make a judgement on the basis of the best evidence it has”. In this case, this has

been done based on the Quarter Session Order and the Order map overlaid on the Definitive Map attached at Appendix E.

30. When taking everything into consideration, the bridleway in its entirety would therefore be from the direction of Ingestre through Dog Kennel Gate to Trent Walk and then along the line of the newly created bridleway towards Hopton Heath, including the alleged route subject to this application.
31. No Orders or other documentation have been discovered to suggest that the bridleway from Dog Kennel Gate to Trent Walk have ever been the subject of an Order extinguishing any public highway rights.
32. In the absence of any contrary evidence the existence of the diversion Order, the landowner consent and confirmation Order all provide strong evidence that the public bridleway still exists.
33. In summation the effect of the order therefore is that the diverted bridleway in its entirety, from Dog Kennel Walk to Hopton Heath, remains a public bridleway, not just from Trent Walk to Hopton Heath.
34. The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with current road layout. The map at Appendix E shows the overlay corresponding closely with the network and so some reliance can be placed upon it when considering a plan of the diverted routes and those that remained. Although, as already stated the case of Roxlena shows that where there are “shortcomings of the evidence on the exact alignment of claimed routes”, this does not prevent an order being made.
35. The Ingestre Estate Diversion Plan is not to scale but does show the routes that crossed the Earl’s lands, and which were diverted as part of the order.
36. The effect and weight of the estate plan would under usual circumstances be considered to have less evidential value than an OS map. At best it is a record of physical features that the estate agent believed existed.
37. In this case the probative value is enhanced by the existence of the 1801 Diversion Order. The plan was drawn up before the Order was made, certainly at least a year beforehand or given the papers date from 1792 to 1800, the intent may have existed for a greater time period. It supports that the alleged route formed part of the diversion and there is no evidence that the route has legally been extinguished.

Comments on report

38. Following circulation of the report comments were received from the applicant, Mr Reay. This included some further documents, such as a document produced by Staffordshire County Council several years ago to assist with the alignment of the route between points C to D.
39. Mr Reay also provided another document produced by Staffordshire County Council, which also assists with the alignment of the route between points C to D. This document also relates to the 1801 Quarter Session Order. Copies of both documents are attached at Appendix I.
40. Correspondence was also received from Ingestre with Tixall Parish Council, which included a letter, which they believe showed that the alleged route had been extinguished. On review of the correspondence, at the time of the letter an attempt was made to try and resolve concerns about the alleged route by having the route diverted, which would require all landowners affected by the alleged route agreeing to the diversion. In order for the diversion to take place, the original route would need to first be

legally extinguished. In order for the extinguishment to take place it would have required all landowners to accept the existence of the route. Unfortunately, an agreement could not be reached by all the landowners affected by the proposal to the extinguishment and diversion of the route and therefore it did not take effect and the alleged route was never extinguished.

Burden and Standard of Proof

41. 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.
42. 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.
43. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
44. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is “reasonably alleged to subsist” over land must by definition be less than that which is necessary to establish the right of way “does subsist”.
45. If the conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.

Summary

46. Quarter Session Orders can often be relied upon their own to prove the status and public nature of a route. The orders made by the Justices of the Peace were Court Orders, which could only be overturned by another court or by statute.
47. After the 1773 Highways Act these orders could also widen, divert and extinguish routes. In the case of a diversion, this did not take effect until the new route was laid out and certified by the Justices as being satisfactory.
48. In this case, the diversion Order, the confirmation Order and the landowner consent all provide strong evidence that a public bridleway exists along the alleged route, particularly when compared with the current road layout, which corresponds closely with the network.
49. It appears from the evidence in the Quarter Session Order that this section of route was included as part of the diversion, arguably illegally by the Earl of Talbot, but the route was used by the public and therefore it can be argued that it was dedicated under common law. There is no evidence that there has been any legal event that extinguishes any legal rights over this alleged route and therefore it can be argued that the route does have bridleway status.

Conclusion

50. 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 Public Bridleway, which is not shown on the map and statement does subsist.
51. The Quarter Session Order is a legal document and there is evidence of common law dedication. No other documentation has come to light to show that any rights over the alleged route have been extinguished or the route was stopped up and therefore this supports the contention that the alleged route has bridleway status.
52. Therefore, it is the opinion of your officers that the County Council should make a Modification Order to add this route to the Definitive Map and Statement of Public Rights of Way as a Public Bridleway.

Recommended Option

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

Other options Available

54. To decide to reject the application for the addition of a Public Bridleway from Byway No 3 north of Stable Farm to Trent Walk, Ingestre.

Legal Implications

55. The legal implications are contained within the report.

Resource and Financial Implications

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

Risk Implications

58. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment 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.
59. 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.
60. Should the Council decide not to make an Order the applicants may appeal that decision to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.

61. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

Equal Opportunity Implications

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

J Tradewell

Director for Corporate Services

Report Author: Hannah Titchener

Ext. No: 854190

Background File: LE624G (b)

INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Copy of Quarter Session Order and accompanying map dated 1801
Appendix D	Transcript of text from the Quarter Session Order dated 1801
Appendix E	Map of Justice Order Plan 1801 routes overlaid on the Definitive Map of Public Rights of Way
Appendix F	Copy of Ingestre Estate Plans
Appendix G	Copy of correspondence from Ingestre with Tixall Parish Council
Appendix H	Copy of correspondence from Dr Fowkes
Appendix I	Copy of documents provided by the applicant, produced by Staffordshire County Council showing the alignment of the route between points C to D.

FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of INGESTRE

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 to

* adding the ~~(footpath)(bridleway)(byway open to all traffic)~~ from HIGHWAY NORTH OF STABLE FARM to WEST END OF TRENT WALK.

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

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

and shown on the map accompanying this application.

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

*delete as appropriate.

List of Documents

THIS BRIDLEWAY IS ON HIGHWAY
ORDER Q/SB EPIPH 1802 - (PINK ON ENCLOSED
MAP)
(YOU ALREADY HAVE A COPY)

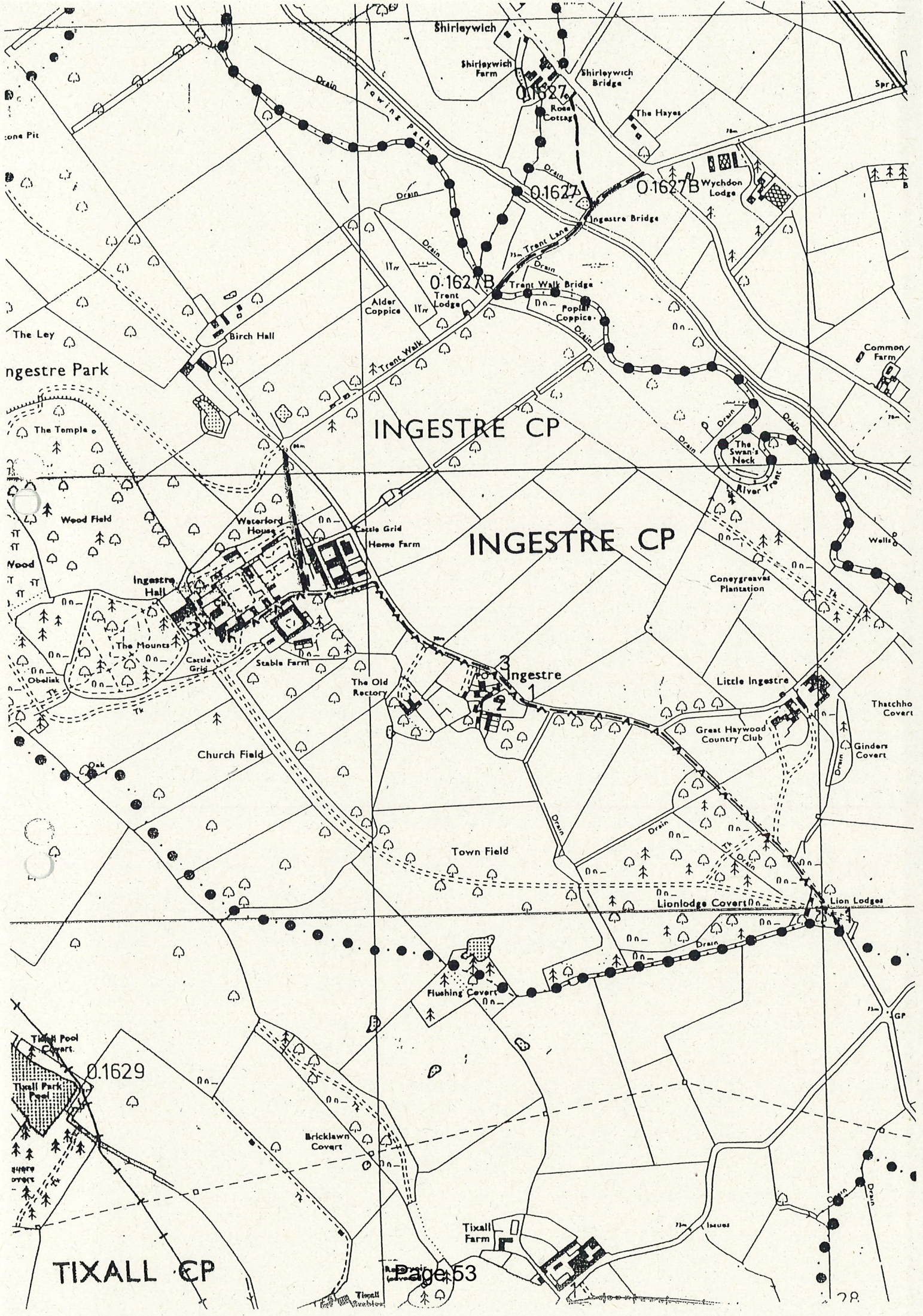
Date

6/5

19 98

signed.....

M. Peay



Shirleywich

Shirleywich Farm

Shirleywich Bridge

The Hayes

Wychdon Lodge

Ingestre Bridge

Trant Lodge

Poplar Coppice

Birch Hall

Ingestre Park

INGESTRE CP

INGESTRE CP

Ingestre Hall

Waterford House

Castle Grid

Home Farm

Coneygroves Plantation

Little Ingestre

Ingestre

The Old Rectory

Church Field

Great Haywood Country Club

Thatcho Covert

Ginders Covert

Town Field

Lionlodge Covert

Lion Lodges

Flushing Covert

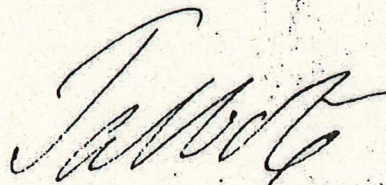
0.1629

Bricklawn Covert

Tixall Farm

TIXALL CP

I Charles Fitzroyne Earl Talbot being owner of the lands described in the Plan herewith annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre park and the Stafford and Macclesfield Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me (Do hereby consent to the making such new Bridleway through my said lands - and I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the Bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and Seal the first — Day of November 1801 -




We whose names are hereunto subscribed being the Justices
of the peace who have viewed the several Bridleways describ'd
in the plan hereunto annexed and made an Order for
diverting the Old Bridleway and being satisfied that the
new Bridleway therein described is properly made and fit
for the reception of Travellers. Do hereby order that that
part of the said Old Bridleway being of the length of 739
yards or thereabouts be stopp'd up and the land and soil
thereof given to the Right Honourable Charles Chetwynd
Earl Talbot for his own private use as a recompence
and satisfaction of the land taken from him for the
purpose of making such new Bridleway. Dated this first
Day of January — in the year of our Lord 1802.

J. Sparrow
Clerk. Higgins

Staffordshire We John Sparrow Esq. and Lambroke Higgins Justices of
his Majesty's Justice of the Peace for the said County at a
special sessions held at Birston — in the Hundred
of Pirehill South in the said County the first — Day of
November — in the year of our Lord 1801 — having upon view
found that a certain part of a Bridleway from Hopton to
Stafford lying within the Parishes of Ingworth in the said
Hundred between a place called the Dog Kennel Gate and
Sixall park Gate of the length of seven Hundred and thirty
nine yards or thereabouts and particularly described in the
plan hereunto annexed may be diverted and turned so as to
make the same more commodious to the public & having
viewed the course proposed for the new Bridleway in
lieu thereof through the lands and Grounds of the Right
Honourable Charles Chetwynd Earl Talbot of the length
of two Thousand six Hundred & twenty six yards and of the
breadth of eight feet and having received evidence of the
consent of the said Earl to the said new Bridleway being
made through his lands by writing under his hand
and seal. We do hereby order that the said Bridleway be
diverted and turned through his said lands accordingly.

Sparrow
Lambroke Higgins

Justices Order and plan for the stopping up and diversion of part of a bridle way from Hopton to Stafford dated 1801, Earl of Talbots dedication of new bridleway and bridle bridge dated 1801 and certificate of completion dated 1802. (Transcript)

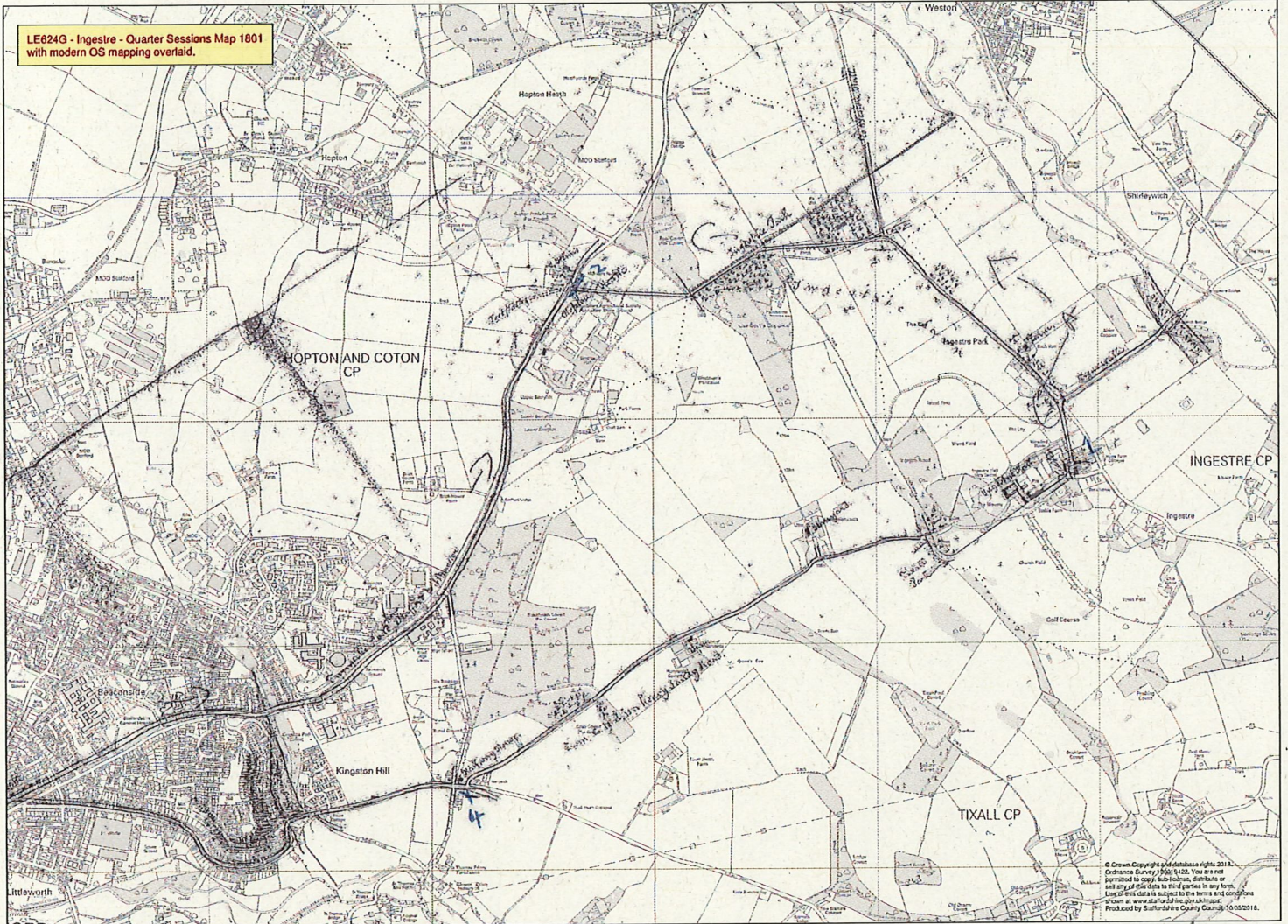
We John Sparrow Esq and Sambroke Higgins Esq two of his majesty's Justices of the Peace for the said County at a special sessions held at Bishton in the Hundred of Pirehill South in the said County the first day of November in the year of our Lord 1801- having upon view found that a certain part of a Bridleway from Hopton to Stafford lying within the Parish of Ingestre in the said Hundred between a place called the Dog Kennel Gate and Tixall Park Gate of the length of seven hundred and thirty nine yards or thereabouts and particularly described in the plan hereunto annexed may be diverted and turned so as to make the same more commodious to the public and having viewed the Course proposed for the new Bridleway in lieu thereof through the Lands and Grounds of The right Honourable Charles Chetwynd Earl Talbot, of the length of two thousand six hundred and twenty six yards and of the breadth of 8 feet and having viewed evidence of the consent of the said Earl to the said new Bridleway being made through his Lands by writing under his hand and seal We do order that the said Bridleway be diverted and turned through his said lands accordingly.

I Charles Chetwynd Earl Talbot being owner of the Lands described in the Plan hereunto annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre Park and the Stafford and Uttoxeter Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me Do hereby consent to the making such new bridleway through my said lands – And I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and seal the first day of November 1801

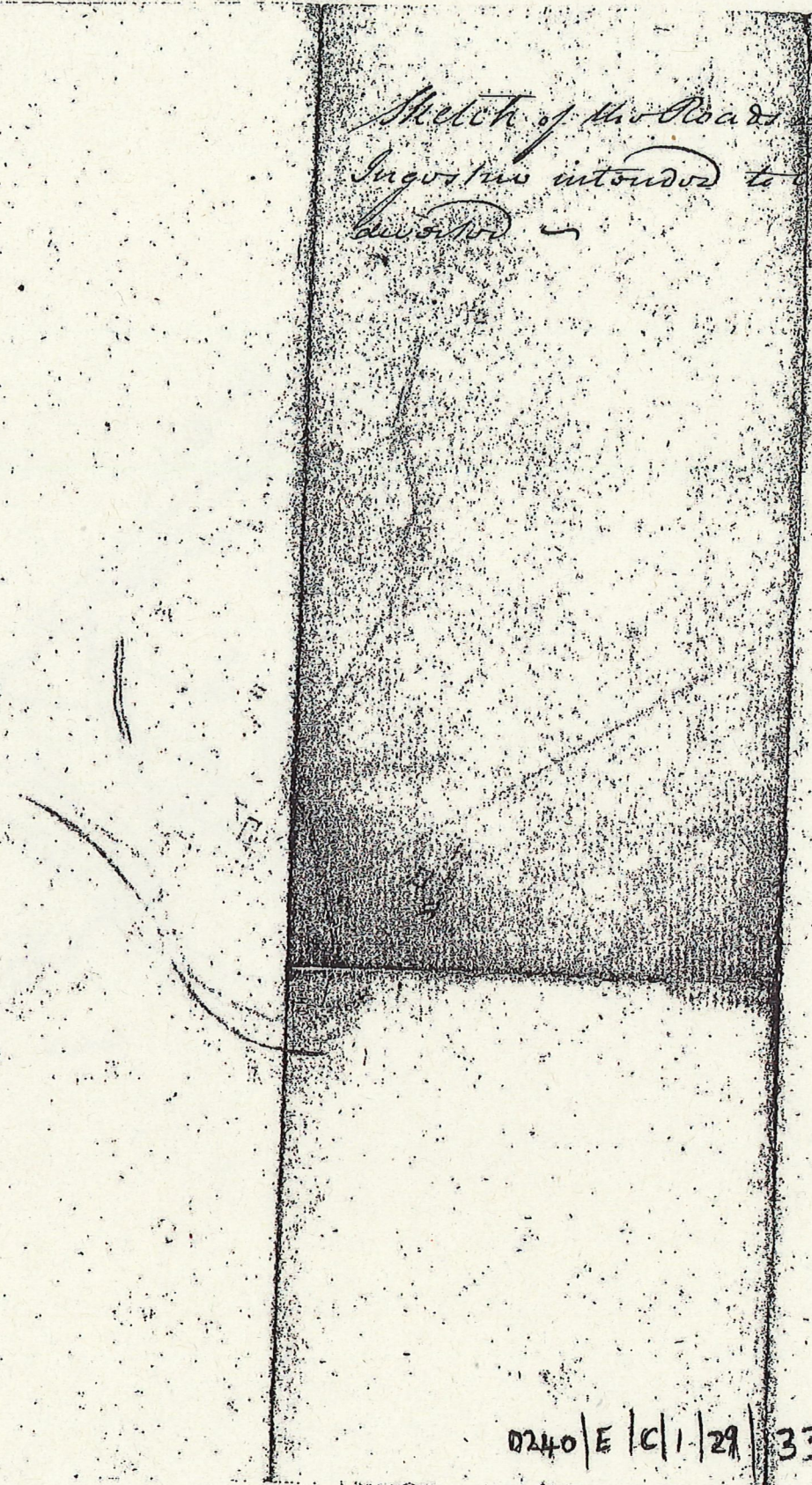
We whose names are hereunto subscribed being the Justices of the Peace who have viewed the several bridleways described in the plan hereunto annexed and made an order for diverting the old Bridleway and being satisfied that the new Bridleway therein described is properly made and fit for the reception of travellers. Do hereby order that this part of the said old Bridleway being of a length of 739 yards or thereabouts be stopped up and the land and soil thereof given to the Right Honourable Charles Chetwynd Earl of Talbot for his own private use as a recompense and satisfaction of the land taken from him for the purpose of making such new bridleway. Dated this first day of January in the year of our Lord 1802.

Signed J Sparrow

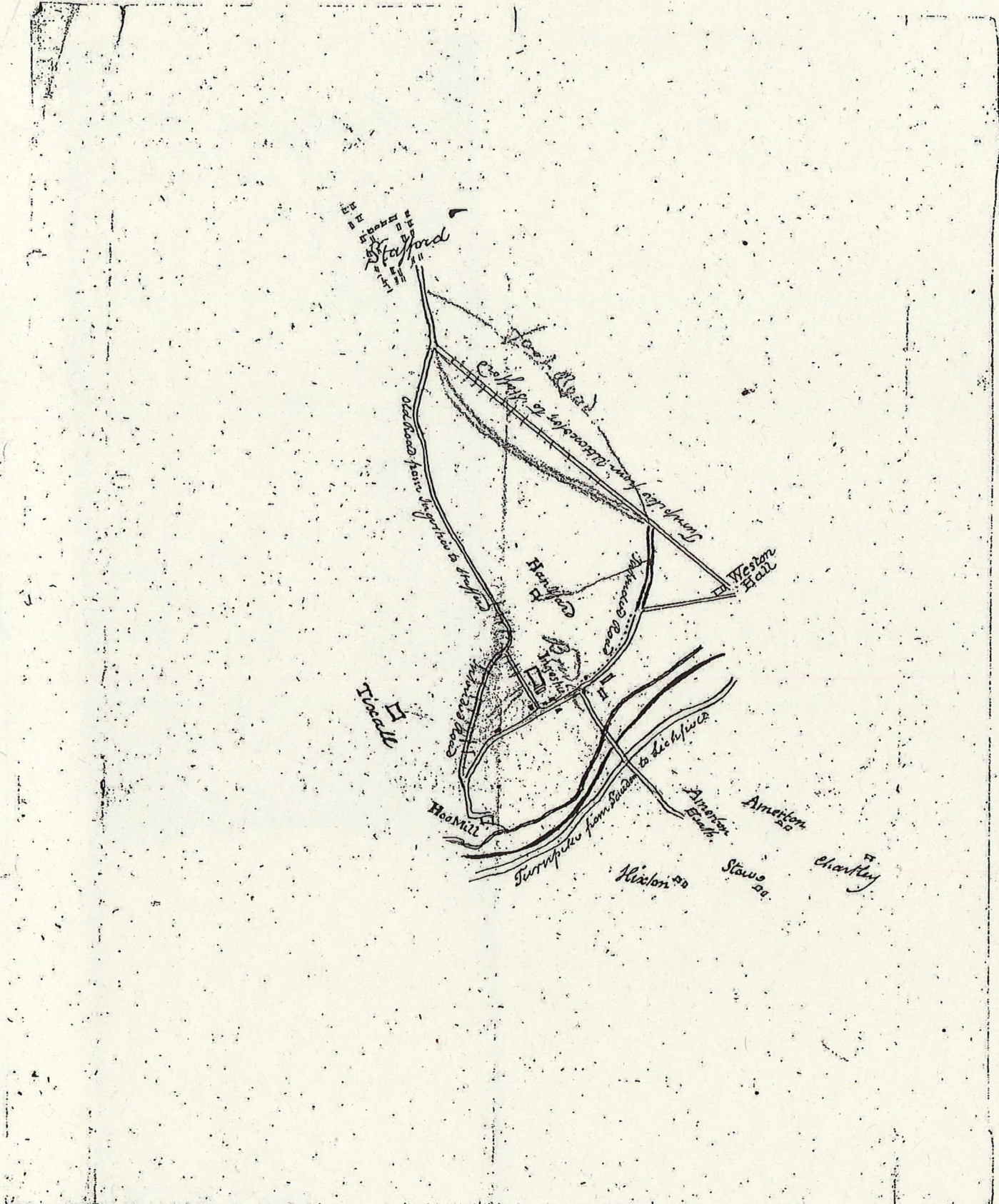
Sambroke Higgins



Sketch of the Roads about
Augustine introduced to the
Government



0240 | E | C | 1 | 29 | 33



INGESTRE WITH TIXALL PARISH COUNCIL

2, The Hanyards,

Tixall,

Stafford, ST18 OXY

15 July 1999

Dear Sir,

ALLEGED PUBLIC BRIDLEWAY BETWEEN TRENT WALK & INGESTRE HOME FARM

With reference to your letter of July 12th, Ref. 4/OTS/LF624G, we note that you are already investigating this section of alleged bridleway, Ref. 4/MWB/amr/19/11/56, and we wrote to you in 1997 about it.

The previous application submitted the 1802 Diversion Order as evidence, which was used to prove that Ingestre Road was a Public Highway and therefore should be maintained by Staffordshire County Council. More recently it was used to correct the anomaly of the Public Bridleway from Dairy Bridge, Tixall, apparently ending at Fiddlers Lodge and becoming a Public Footpath.

The 1802 Diversion Order appears to cover 3 alleged bridleways: The A51 and Trent Walk to Fiddlers Lodge Ref. 4/MWB/cd/19/11/156 (1996); Trent Walk to Ingestre Home Farm; and Ingestre Wood to the bottom of Hanyards Lane Ref.4/MWB/amr/19/11/56 (1997). It would be sensible to consider all three at the same time.

The latest repeat application from Trent Walk to Ingestre Home Farm depends on other parts of the network to provide a through route.

Two members of the Parish Council have a direct interest in the alleged bridleways. We do not therefore wish to comment further.

Yours sincerely,

Dr Anne Andrews (Parish Clerk)

John Gregory, Director of Central Services,
PO Box 11, County Buildings, Martin Street, Stafford ST16 2LH

DR. D.V. FOWKES, FSA

**CONSULTANT ARCHIVIST
HISTORICAL RESEARCHER**

Sarah Fraser,
Resources Directorate,
Staffordshire County Council

29th October 2005

Yr.ref: 4/SF/LE624G

Dear Miss Fraser,

**WILDLIFE AND COUNTRYSIDE ACT 1981: ALLEGED PUBLIC
BRIDLEWAY BETWEEN TRENT WALK AND FIDDLERS LODGE,
INGESTRE, AND ALLEGED PUBLIC BRIDLEWAY BETWEEN
HANYARDS LANE AND INGESTRE PARISH BOUNDARY**

Thank you for your letter of 25 October.

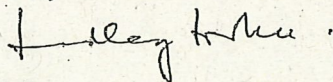
I can see no reason why this stopping-up order is not as straightforward as it appears. Presumably Earl Talbot was fed up with the general public passing in front of Ingestre Hall so persuaded his fellow justices to stop up the section of the Stafford-Ingestre bridleway in front of the house and substitute a much longer section of route through his own land but away from the Hall. The substitution of a greater length of route may have been presented as a magnanimous gesture but it of course resulted in a substantially longer route from Ingestre to Stafford via Hopton, rather than the shorter Hanyards route.

There is no doubt to me that the length of bridleway stopped up is only the 739 yards in front of the Hall from Dog Kennel Gate to Tixall Park Gate. The length fits in very well with the accurate modern maps if you relate it to the scale. The residue of the bridleway from Littleworth to Hanyards is not affected by the Order and presumably continued as a bridleway serving Hanyards but of no use as a through route.

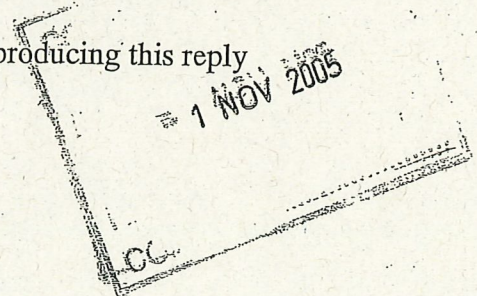
I hope these remarks are helpful and help to solve whatever the current issue is.

I enclose an invoice for £20-00 for considering the matter and producing this reply which I hope is acceptable.

Yours sincerely



Dudley Fowkes



Local Members' Interest		
Cllr J Francis	Stafford- Valley	Stafford Trent

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application for the addition of a Public Bridleway from Hanyards Lane to Ingestre and to upgrade Public Footpath 0.1630(b) to a Public Bridleway

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is sufficient to show that the alleged public bridleway from Hanyards Lane to Ingestre subsists.
2. That an Order be made to add the alleged right of way shown on the plan attached at Appendix B and marked E to F to the Definitive Map and Statement of Public Rights of Way for the District of Stafford as a Public Bridleway.

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 Bridleway from Hanyards Lane to Ingestre and upgrade Public Footpath 0.1630(b) to a Public Bridleway to the Definitive Map and Statement 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 Bridleway which are the subject of the application are shown highlighted and marked E – F 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 claim evidence of a Quarter Session Order dated 1801, Ingestre Estate Plans and documentation relating to an objection made by the Ramblers Association regarding the National Parks and Countryside Act 1949.
2. The Quarter Session Order dated 1801 sets out a diversion which stopped up a length of bridleway that passed in front of Ingestre Hall and turned the bridleway onto a new line leading to a point on the Stafford and Uttoxeter Turnpike Road which is now the A518, Weston Road near the County Showground.
3. The text of the Order describes the original bridleway as running from Hopton to Stafford. The original route passed in front of Ingestre Hall from Dog Kennel Gate to Tixall Gate and thence passed Hanyard terminating at Halfway House, which is the route subject to this report. From that junction to reach Stafford it would have passed along what is now Tixall Road to come out on the A518, now called Weston Road terminating at the same point as it currently does.
4. By way of identification and orientation the feature on the map showing a bow in Tixall Road is still in existence. Weston Road was at the time of the Order part of the Turnpike Road from Stafford to Uttoxeter. Copies of the original order and the accompanying map are attached at Appendix C. Officers have transcribed the text of the Order and a copy of the transcript is attached at Appendix D.
5. A length of some seven hundred and thirty-nine yards of the old bridleway was to be stopped up, this being the section from Dog Kennel Gate to Tixall Park Gate and being directly in front of Ingestre Hall. The bridleway was to be diverted onto a new line which took the bridleway from the end of Dog Kennel Gate in a north westerly direction and then looping round to terminate on the A518, through where the land now occupied by the County Showground. This route was to be some two thousand six hundred and twenty-six yards in length. A map showing the lines of the routes set out on the Order Map has been produced to assist in identifying the line of the ways on a current Ordnance Survey Map and is attached at Appendix E.
6. Earl Talbot, in a deposition that accompanies the order, describes the original bridleway as running from a place called Trent Walk which later in the missive is described as being located at the end of the bridge over the River Trent. On the Order Plan Trent Walk is shown written above the line of the route running towards the River Trent.
7. The Earl then specifically consents to the new bridleway being made through his lands and that he is to have the land that the old route ran over sold to and vested in him. He goes on to declare that he will maintain the new bridleway and that the bridge he has erected over the River Trent will be a Public Bridle Bridge that he will also maintain.
8. A certificate of completion accompanies the Order stating that the Justices were satisfied that the new bridleway was fit for purpose and ordered that the land over which the extinguished part crossed be given to the Earl in compensation for the new route over his lands.
9. The documentation regarding the objection made by the Ramblers Association regarding an omission as part of the National Parks and Countryside Act 1949 refers to Hanyards Lane at Upper Hanyards. It states, "route proceeds SW, possibly as a bridle road".

Evidence submitted by the Landowners

10. A number of landowners have submitted a relatively large amount of evidence but none of the evidence refutes the Quarter Session Order.

Comments received from statutory consultees

11. Stafford Borough Council have responded to the application stating that they have no comments to make regarding the application.
12. Ingestre with Tixall Parish Council responded stating that three members of their Parish Council have direct interests in the alleged Public Bridleway and therefore they do not wish to comment.
13. Copies of the above correspondence are attached at Appendix F.

Comments on Evidence

14. The authenticity and content of the 1801 Order as well as the veracity of the attached copies has been verified by your officers.
15. The combination of the Order and the attached plan provides a fairly accurate description of the path intended to be diverted and the new bridle path. In particular the Order refers to the stopping up of a small section of the lane running between "Dog Kennel Gate" and "Tixall Park Gate", both of which are marked on the Order Plan. There is no reference to any other part of the old bridleway being stopped up.
16. The Order clearly sets out that the old bridleway is to be diverted and turned in consideration for the new route so as to make the same more commodious to the public. The use of the word commodious is taken to mean that it would be to the public benefit as in more advantageous or easier to use.
17. The Order Plan shows the diverted route as going passed Birch Hall Farm, towards and passed the Old Lodge Covert, through to Hopton Heath where it joined the Stafford to Uttoxeter Turnpike Road.
18. The consent states that the bridge over the River Trent is to be maintained by the Earl of Talbot and used as a public bridle bridge as part of the diversion, clearly implying that the full length of Trent Walk and the bridge at that time were to be public bridleways. The implications of whether those routes ought to be added to the Definitive Map and Statement is addressed in a separate report.
19. What the consent does show is that the Earl intended for there to be a network of public bridleways in place from the direction of Hoo Mill which lay to the south passing through Dog Kennel Gate and thence to pass by Trent Walk and the bridge over the Trent and on to the Turnpike Road.
20. The fact that the new bridleway is longer and would entail a lengthier journey time does suggest that the route being more commodious is misleading. Rather one could speculate that the purpose might have been to move the public highway that passed directly in front of the Earl's dwelling leading to more privacy for the Earl. Of course, the latter is not a valid reason for a diversion either at that time or today.
21. Despite the intent of the Order being open to question and that the route does not seem, on the face of it, to be more commodious, it still has legal effect. The time to challenge the order was when it was made. In the absence of such, and given it was subsequently confirmed it has legal effect.

22. The Order has been examined by Dr D Fowkes, FSA, a consultant archivist and historical researcher. Dr Fowkes states in his letter that “there is no doubt that the length of bridleway stopped up is only the 739 yards in front of the Hall” in substitution of a much longer section of route through the earl’s own land away from the Hall. Dr Fowkes confirms that: “the residue of the bridleway from Littleworth to Hanyards is not affected by the Order and presumably continued as a bridleway serving Hanyards but of no use as a through route”. A copy of the letter from Dr Fowkes is attached at Appendix G. This strongly supports that the alleged route that is subject to this report was not stopped up and continued to act as a public bridleway for members of the public to use.
23. If one considers the old bridleway, it is apparent that it ran in front of the Hall from the Tixall Park Gate to Dog Kennel Gate and thence towards Trent Walk.
24. No Orders or other documentation have been discovered to suggest that the bridleway from Hanyards Lane and including Hanyards Lane to the Stafford Road have ever been the subject of an Order extinguishing any public highway rights.
25. In the absence of any contrary evidence the existence of the diversion Order, the landowner consent and confirmation Order all provide strong evidence that the public bridleway still exists along the line of the alleged route.
26. The remaining conclusion one can draw from the Order is the relative accuracy of the map when it is compared with the current road layout. The map at Appendix E shows the overlay corresponding closely with the network and so some reliance can be placed upon it when considering a plan of the diverted routes and those that remained.
27. The documentation relating to the objection from the Ramblers Association regarding an omission to the National Parks and Countryside Act 1949 does not add any weight to the case, other than there was a belief that this route may have had bridle rights over it.

Comments on report

28. Following circulation of the report comments were received from International Design Group Ltd, acting for Ingestre Golf Club as golf course architects and Project Managers for the reconfiguration of the golf club necessitated by the proposed route of HS2 through the golf course. They have raised concerns that if the application is accepted, it will breach safety guidance, as the bridleway will be too close to holes along the golf course, and this could result in injury due to stray golf balls. A response was sent advising that although their comments were noted, the courts have confirmed that issues relating to safety, suitability, privacy, maintenance or anything other than material relating to the existence of a public right of way have to be disregarded under the law as it currently stands. Therefore, officer’s recommendation remains unchanged. A copy of International Design Group Ltd.’s correspondence and officer’s response is attached at Appendix H.
29. Comments were also received from the applicant, Mr Reay stating that part of the alleged route, highlighted in yellow by Ingestre Parish Boundary, connecting to FP 0.1630b was stopped up under the 1801 Order. On review of all the evidence, as already stated in the report, it is officer’s opinion that there was no conclusive evidence that this part of the route was ever stopped up and that is why it has remained part of the application and the recommendation is to also upgrade this section of the route to bridleway status.
30. Mr Reay also noted that there was a slight error with Appendix B in relation to where the points were marked on the map, highlighting the alleged route subject to this report.

This has been amended and to make clear the application route for this application does include Hanyards Lane and the evidence of the Quarter Session Order does not show that Hanyards Lane was stopped up by the Order and therefore on the balance of probabilities it is likely that it remained a public bridleway and should therefore be added to the Definitive Map and Statement as a Public Bridleway, along with the rest of the alleged route. Copies of Mr Reay's comments and officers response is attached at Appendix I.

Burden and Standard of Proof

31. 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
32. 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.
33. For the first test to be satisfied it will be necessary to show that on a balance of probabilities the right of way does subsist.
34. For the second test to be satisfied the question is whether a reasonable person could reasonably allege a right of way subsists, having considered all the relevant evidence available to the Council. The evidence necessary to establish a right of way which is "reasonably alleged to subsist" over land must by definition be less than that which is necessary to establish the right of way "does subsist".
35. If a conclusion is that either test is satisfied, then the Definitive Map and Statement should be modified.
36. In relation to upgrading the section of the alleged route that is Public Footpath 0.1630(b), the burden is on the applicant 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 route, as a footpath, 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 route as a footpath on the Definitive Map and Statement prevails.

Summary

37. Quarter Session Orders can often be relied upon their own to prove the status and public nature of a route. The orders made by the Justices of the Peace were Court Orders, which could only be overturned by another court or by statute.
38. After the 1773 Highways Act these Orders could also widen, divert and extinguish routes. In the case of a diversion, this did not take effect until the new route was laid out and certified by the Justices as being satisfactory.
39. The Quarter Session Order shows that the only route that was stopped up was the route in front of Ingestre Hall but the rest of the route from Dog Kennel to the road to Stafford, which is the subject of this report was never stopped up or diverted, therefore the evidence from the Quarter Session Order supports the existence of the route as a public bridleway.

Conclusion

40. The application is to be considered under s53(3)(c)(i) as mentioned above, and so the question of whether the application should succeed needs to be evaluated against both tests in that section.
41. When the totality of the evidence is considered, the evidence does satisfy the first part of the test set out in s53(3)(c)(i) above, that is whether on the balance of probabilities a public bridleway subsists.
42. The evidence provided by the Quarter Session Order is good evidence and there is no contrary evidence to show that the alleged route was stopped up and that legal rights were extinguished over it. This absence of conflicting evidence could be taken to mean that the application has passed the test on the balance of probabilities.
43. When the lesser test is considered, that of reasonable allegation, that is clearly satisfied. As the courts have indicated, if it is reasonable to consider any conflicting evidence and reasonable to accept the evidence of existence then an order should be made and the material be tested during that process. Here there is no conflicting evidence to weigh in the balance and so it does clearly satisfy the test.
44. Taking everything into consideration it is apparent that the evidence shows that a public right of way, with the status of bridleway, which is not shown on the map and statement subsists.
45. As it can be said that the application has passed the test on the balance of probabilities, it can be said that Public Footpath 0.1630(b) Tixall should be upgraded to a public bridleway, therefore showing that the whole of the alleged route as a public right of way, with the status of bridleway.

Recommended Option

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

Other options Available

47. To decide to reject the application to add a Public Bridleway from Hanyards Lane to Ingestre and upgrade Public Footpath 0.1630(b) Tixall to a Public Bridleway.

Legal Implications

48. The legal implications are contained within the report.

Resource and Financial Implications

49. The costs of determining applications are met from existing provisions.
50. 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

51. 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.
52. 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.
53. 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.
54. 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

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

J Tradewell

Director for Corporate Services

Report Author: Hannah Titchener

Ext. No: 854190

Background File: LE624G (c)

INDEX TO APPENDICES

Appendix A	Copy of application and associated submitted letters and documents
Appendix B	Plan of claimed route
Appendix C	Copy of Quarter Session Order and accompanying map dated 1801
Appendix D	Transcript of text from Quarter Session Order dated 1801
Appendix E	Copy of Justice Order Plan 1801 routes overlaid on the Definitive Map of Public Rights of Way
Appendix F	Copy of correspondence from statutory consultees
Appendix G	Copy of letter from Dr Fowkes- consultant archivist and historical researcher
Appendix H	Copy of correspondence from International Design Ltd and copy of officer's response
Appendix I	Copy of correspondence from applicant regarding report and copy of officer's response.

FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

Definitive Map and Statement - Staffordshire County Council

District of STAFFORD

Parish of TIXALL + INGESTRE

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

I/We MARTIN NEAM

of 53 TITHE BARN RD STAFFORD ST16 3PL

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 HANYARDS LANE (S) to INGESTRE PARISH BOUNDARY (T)

* (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

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

PHOTOCOPY OF
QUARTER SESSION ORDER FOR DIVERSION
(EPIPHANY 1802). FOR DIVERTING A BRUILEWAY.

Date

3/11


19

97

signed.....

Matia Reuf

I Charles Pheloupe Earl Talbot being owner of the lands described in the Plan herewith annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre park and the Stafford and Uttoxeter Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me (Do hereby consent to the making such new Bridleway through my said lands - and I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the Bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and seal the first — Day of November 1801 -




We whose names are hereunto subscribed being the Justices
of the peace who have viewed the several Bridleways describe
in the plan hereunto annexed and made an order for
diverting the old Bridleway and being satisfied that the
new Bridleway therein described is properly made and fit
for the reception of Travellers. Do hereby order that that
part of the said old Bridleway being of the length of 739
yards or thereabouts be stopped up and the land and soil
thereof given to the Right Honourable Charles Chetwynd
Earl Talbot for his own private use as a recompence
and satisfaction of the land taken from him for the
purpose of making such new Bridleway. Dated this first
day of January — in the year of our Lord 1802.

J. Sparrow
Clerk. Higgins

Staffordshire We John Sparrow Esq. and Lambroke Higgins (but two of
his Majesty's Justices of the Peace for the said County at a
special Sessions held at Bishton ————— in the Hundred
of Pirehill South in the said County the first — Day of
November — in the year of our Lord 1801 — having upon view
found that a certain part of a Bridleway from Hopton to
Stafford lying within the Parish of Ingershrie in the said
Hundred between a place called the Dog Kennel Gate and
Fixall park Gate of the length of seven Hundred and thirty
nine yards or thereabouts and particularly described in the
plan hereunto annexed may be diverted and turned so as to
make the same more commodious to the public & having
viewed the course proposed for the new Bridleway in
lieu thereof through the lands and Grounds of The Right
Honourable Charles Chetwynd Earl Talbot of the length
of two Thousand six Hundred & twenty six yards and of the
breadth of eight feet and having received Evidence of the
consent of the said Earl to the said new Bridleway being
made through his lands by writing under his hand
and seal. We do hereby order that the said Bridleway be
diverted and turned through his said lands accordingly.

Sparrow
Lambroke Higgins

Justices Order and plan for the stopping up and diversion of part of a bridle way from Hopton to Stafford dated 1801, Earl of Talbots dedication of new bridleway and bridle bridge dated 1801 and certificate of completion dated 1802. (Transcript)

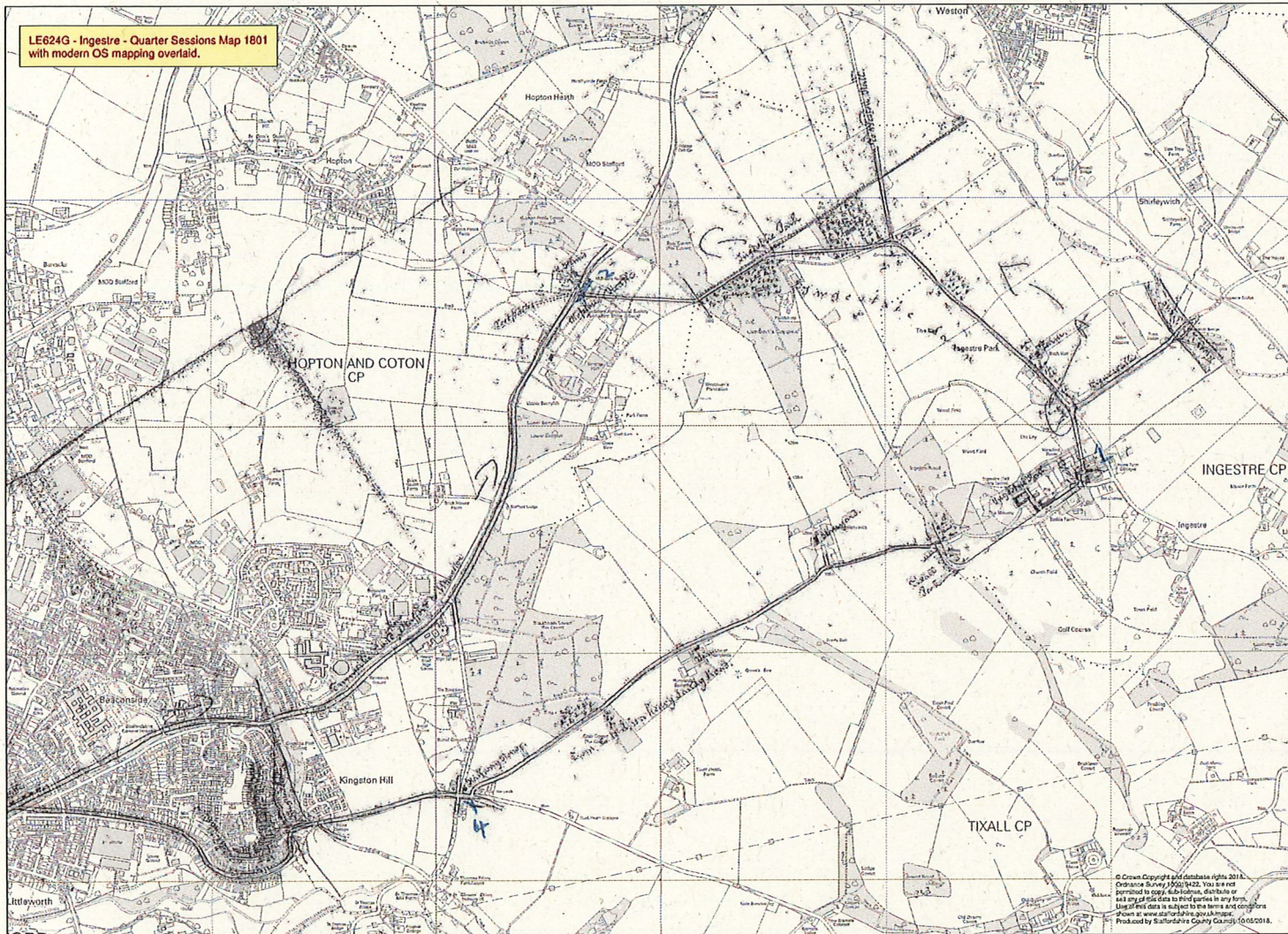
We John Sparrow Esq and Sambroke Higgins Esq two of his majesty's Justices of the Peace for the said County at a special sessions held at Bishton in the Hundred of Pirehill South in the said County the first day of November in the year of our Lord 1801- having upon view found that a certain part of a Bridleway from Hopton to Stafford lying within the Parish of Ingestre in the said Hundred between a place called the Dog Kennel Gate and Tixall Park Gate of the length of seven hundred and thirty nine yards or thereabouts and particularly described in the plan hereunto annexed may be diverted and turned so as to make the same more commodious to the public and having viewed the Course proposed for the new Bridleway in lieu thereof through the Lands and Grounds of The right Honourable Charles Chetwynd Earl Talbot, of the length of two thousand six hundred and twenty six yards and of the breadth of 8 feet and having viewed evidence of the consent of the said Earl to the said new Bridleway being made through his Lands by writing under his hand and seal We do order that the said Bridleway be diverted and turned through his said lands accordingly.

I Charles Chetwynd Earl Talbot being owner of the Lands described in the Plan hereunto annexed through which part of a certain Bridleway lying between a place called the Trent Walk at the entrance thereof into Ingestre Park and the Stafford and Uttoxeter Turnpike Road in the Parish of Ingestre in the County of Stafford is intended to be diverted and turned in consideration of the said old Bridleway and the soil thereof being sold to and vested in me Do hereby consent to the making such new bridleway through my said lands – And I do agree to keep the said new Bridleway at all times hereafter in good and sufficient repair and also to allow the bridge by me erected over the River Trent at the other end of the said Trent Walk to be used hereafter as a publick Bridle Bridge and to keep the said Bridge in proper repair and order. Given under my Hand and seal the first day of November 1801

We whose names are hereunto subscribed being the Justices of the Peace who have viewed the several bridleways described in the plan hereunto annexed and made an order for diverting the old Bridleway and being satisfied that the new Bridleway therein described is properly made and fit for the reception of travellers. Do hereby order that this part of the said old Bridleway being of a length of 739 yards or thereabouts be stopped up and the land and soil thereof given to the Right Honourable Charles Chetwynd Earl of Talbot for his own private use as a recompense and satisfaction of the land taken from him for the purpose of making such new bridleway. Dated this first day of January in the year of our Lord 1802.

Signed J Sparrow

Sambroke Higgins





Stafford Borough Council

Civic Offices, Riverside, Stafford, ST16 3AQ Telephone 223181
Fax No. 223156

COUNTY CLERK	
(REF)	
20 FEB 1997	
REFER TO
COPY TO
Date	18 February 1997

Town Clerk and Chief Executive's Department
J. K. M. Krawiec, LL.B., Solicitor,
Town Clerk and Chief Executive

My Ref DS1/5/GP/GVK

Your Ref 4/MWB/AMR/19/
11/156

Dear Sir,

ALLEGED PUBLIC BRIDLEWAYS AT HANYARDS LANE, TIXALL AND AT
INGESTRE

I refer to your letter dated 10th January, 1997 together with
enclosures.

I can confirm that the Borough Council has no comments to make on
this application.

Yours faithfully,

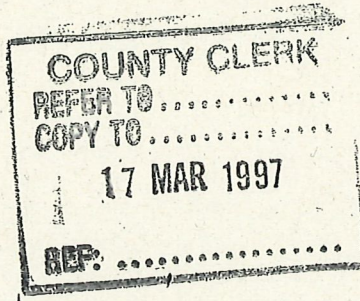
Town Clerk and Chief Executive

B.A. Price, Esq., M.A., D.M.S.,
County Clerk and Chief Executive,
Staffordshire County Council,
P.O. Box 11,
County Buildings,
Martin Street,
Stafford. ST16 2LH

F

INGESTRE WITH TIXALL PARISH COUNCIL

2, The Hanyards,
Tixall,
Stafford, ST18 OXY



March 14th 1997

Dear Mr Price,

ALLEGED PUBLIC BRIDLEWAYS at HANYARDS LANE TIXALL, and at INGESTRE

Further to your letter of January 10th, Ref. 4/MWB/amt/ 19/11/56.

We note that this is the same 1802 Diversion Order which was used to prove that Ingestre Road was a Public Highway and therefore should be maintained by Staffordshire County Council.

It is also likely to be used in the future to enable public funds to be used for the repair of Trent River Bridge, Ingestre.

It has also recently been used to correct the anomaly of the Public Bridleway from Dairy Bridge, Tixall, apparently ending at Fiddlers Lodge, and becoming a Public Footpath.

Three members of our Parish Council have direct interests in Alleged Public Bridleways affected by this Order. We do not therefore wish to comment further.

Yours sincerely,

Anne Andrews

Dr Anne Andrews (Parish Clerk)

acknowledged 17/3

Bernard Price, Chief Executive, Staffordshire CC, PO Box 11, County Buildings, Martin Street,
Stafford ST16 2LH

DR. D.V. FOWKES, FSA

**CONSULTANT ARCHIVIST
HISTORICAL RESEARCHER**

Sarah Fraser,
Resources Directorate,
Staffordshire County Council

29th October 2005

Yr.ref: 4/SF/LE624G

Dear Miss Fraser,

**WILDLIFE AND COUNTRYSIDE ACT 1981: ALLEGED PUBLIC
BRIDLEWAY BETWEEN TRENT WALK AND FIDDLERS LODGE,
INGESTRE, AND ALLEGED PUBLIC BRIDLEWAY BETWEEN
HANYARDS LANE AND INGESTRE PARISH BOUNDARY**

Thank you for your letter of 25 October.

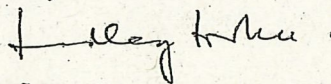
I can see no reason why this stopping-up order is not as straightforward as it appears. Presumably Earl Talbot was fed up with the general public passing in front of Ingestre Hall so persuaded his fellow justices to stop up the section of the Stafford-Ingestre bridleway in front of the house and substitute a much longer section of route through his own land but away from the Hall. The substitution of a greater length of route may have been presented as a magnanimous gesture but it of course resulted in a substantially longer route from Ingestre to Stafford via Hopton, rather than the shorter Hanyards route.

There is no doubt to me that the length of bridleway stopped up is only the 739 yards in front of the Hall from Dog Kennel Gate to Tixall Park Gate. The length fits in very well with the accurate modern maps if you relate it to the scale. The residue of the bridleway from Littleworth to Hanyards is not affected by the Order and presumably continued as a bridleway serving Hanyards but of no use as a through route.

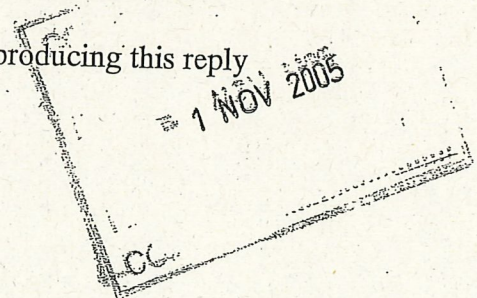
I hope these remarks are helpful and help to solve whatever the current issue is.

I enclose an invoice for £20-00 for considering the matter and producing this reply which I hope is acceptable.

Yours sincerely



Dudley Fowkes



Not for publication by virtue of paragraph(s) 2, 6a, 6b
of Part 1 of Schedule 12A
of the Local Government Act 1972

Document is Restricted

