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Your Ref: LH6275
Our Ref: TZL/TL/121808/0006/Hidderley
Date: 12 February 2021

Ms Hannah Titchener
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By email: hannah.titchener1@staffordshire.gov.uk

Dear Ms Titchener

**Our Client: Mr Robert Hidderley
Land at Creswell Farm, Creswell, Staffordshire
Application for Modification to the Definitive Map and Statement to add footpath
between Eccleshall Road Footbridge over the River Sow**

We have been instructed by our client to object to the above named application. The application was made on 3 November 1998 and I understand that the Council's Countryside and Rights of Way Panel will be meeting soon to determine the application. I have been sent a copy of the officer's report. I am also instructed that you have given my client until 12 February 2021 to make representations which will be taken into account at this meeting.

The application has been made under Section 53(3)(c) of the Wildlife and Countryside Act 1981 (the "1981 Act") and is for the addition of a public footpath at Eccleshall Road to the footbridge over the River Sow, Creswell, as shown marked from A to B on the application plan, to the Council's Definitive Map and Statement. The basis of the application is the discovery of historical evidence of this footpath. The applicant relies on a number of documents which are attached to and summarised in the officer's report.

Mr John Hidderley, Mr and Mrs Henry and Amy Hidderley, of Keeper's Lodge and Mr Mark Williams Hidderley of New Lodge submitted two sets of evidence forms in 1998 which have been attached to and summarised in the officer's report.

The alleged footpath passes between 2 lodges known as Keeper's Lodge and New Lodge and through Creswell farm. The part of the farm through which the route passes is used for grazing cattle.

I enclose the following information:

1. Office copy entries for Creswell Farm
2. Office copy entries and title plans for Keeper's Lodge and New Lodge
3. Map Search Plan for the above annotated with the gates, fence, ruins and lodges referred to in the evidence forms
4. Extracts from a 1923 Ordnance Survey Plan (a full copy of the plan can be arranged if required by the Panel)

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5. Extracts from sales particulars for an auction on 14 June 1927
6. Map attached to the above sales particulars.
7. Conveyance of Creswell Farm to John Henry Hidderley on 28 February 1927.
8. Abstract of title dating from 21 August 1885 and plans
9. Sections 84 to 91 of the Highways Act 1835
10. Photograph of gates and fence

The freehold interest of the farm is registered in the names of Mr Henry Bourne Hidderley, our client's grandfather, Mr John Henry Hidderley, our client's father, and Mr Robert Hidderley, our client. Mr John Henry Hidderley passed away in November 2020 and his wife and our client's mother, Mrs Anne Hidderley, is the executor of his estate. Keeper's Lodge and New Lodge are in separate titles. Amy Hidderley, our client's grandmother, Amy Hidderley has also passed away.

Creswell Farm has been in the ownership of the Hidderley family since it was purchased by John Henry Hidderley, our client's great grandfather in 1927. Mr Henry Bourne Hidderley, our client's grandfather has lived on the farm since then. John Henry Hidderley, our client's father, and our client lived on the farm all their lives. Our client currently lives in the farmhouse while Anne Hidderley lives in New Lodge and John Henry Hidderley lives in Keeper's Lodge. As stated in the evidence form, none of the above can remember the alleged footpath being used by members of the public.

Keeper's Lodge does not appear on the 1888 Ordnance Survey plan produced by the applicant and first appears on the 1902 Ordnance Survey plan. New Lodge first appears on the 1923 Ordnance Survey plan. The extracts from the sales particulars indicate that New Lodge was built in 1914 and states that it was built 13 years before the sales auction in 1927. It can be seen from the plans that there has, since New Lodge first appeared on the plans, always been a gate between the two lodges and a fence around them. The gate and fence remains until now, obscures the alleged footpath and is used to separate the lodges from the adjacent grazing land and cattle on Creswell Farm.

In accordance with section 53(3)(c) of the 1981 Act, the Council is obliged to make modifications to the Definitive Map and Statement where there has been the discovery of evidence which shows that a right of way either exists or is reasonably alleged to exist and which is not shown on the definitive map. Satisfaction of the latter test - reasonably alleged to exist - is sufficient for the Council to make an order. However, if an objection is made and the order is referred to the Secretary of State for confirmation, he can only confirm the order if, it is proven, on the balance of probabilities, that the right of way does in fact exist. This is established by case law (for example *Todd v Secretary of State for the Environment Food and Rural Affairs* [2004] 1 W.L.R. 2471)

The premise of our client's objection is that there is compelling evidence to show that the alleged footpath was diverted or extinguished before 1923 and that, in light of that evidence, the Council is obliged to make further investigations before making the order. This will save all parties the time and expense of going through the confirmation process with the planning inspectorate if investigations show that the footpath was diverted or extinguished.

Notwithstanding the ability for members of the public to object to a map modification order and the local inquiry process for confirmation of the order, there is a duty on the Council to properly investigate each application under section 53 of the 1981 Act as was decided in *R. v Isle of Wight County Council Ex p. O'Keefe* (1989) 59 P. & C.R. 283. The order therefore should not be made at this time and the decision of the panel should be to decline to make the order or to defer their decision until further investigations are carried out.

We note that the route in the 1888 Ordnance Survey plan, the Finance Act plan and the 1902 Ordnance Survey plan as well as the routes on the plans attached to the abstract of title vary. As stated in the report, the Ordnance Survey plan can provide no evidence of whether a path is public or not. There is reference in the 1910 Finance Act documents to a public footpath in which follows a similar route to the alleged footpath.

The 1923 and 1925 Ordnance Survey plans does not show the alleged footpath or any route similar to it. It shows New Lodge and a path which is similar to public paths Seighford 32, Seighford 34 and Creswell 2. These facts, in our view, are unlikely to be a coincidence and strongly point to the extinguishment or diversion of the alleged footpath prior to 1923. The diversion or extinguishment may have been linked to the construction of New Lodge, which would explain the obstruction of the previous path by the gate and fence and the claimed route may have been replaced with routes 32, 34 and 1.

As stated, Mr Henry Bourne Hilderley lived on the farm since 1927 and has not observed members of the public using the claimed footpath as of right. Up till about 15 years ago, the landowners granted permission to the parish church and members of the public to cross the farm to attend an open-air service at the Creswell chapel ruins once a year. However this arrangement is not capable of amounting to a deemed dedication of a right of way and is irrelevant to the application, which is based on the discovery of historical evidence. Members of the public did not follow the route of the alleged footpath when going to view the ruins or attend the open air service.

The procedures for diverting or extinguishing highways in the early 20th century were found in Sections 84 to 91 of the Highways Act 1835. We enclose these sections as originally enacted. The sections describe a formal process involving the church, the Parish Council, the County Surveyor and the justices of the peace to divert the footpath to a more commodious route or extinguish it as unnecessary. This process involved applications, notices, site visits, certificates and an appeal process.

As stated above, the evidence, including the disappearance of the claimed route on all maps within a relatively short period of time between 1910 and 1923, the construction of the lodges and the fact that the land had been in the Hilderley family's ownership since 1927 without any 'as of right' use by the public of the claimed footpath strongly points to the conclusion that the claimed path, if it existed as a public footpath, was extinguished diverted before 1923.

We therefore request that inquiries are made of Creswell and Seighford Parish Councils, St Mary's Church in Creswell and St Chad's Church in Seighford, the County Council's own records, William Salt Library and the local courts prior to the order being made. We have been recently instructed in this matter and will be making our own enquiries.

The officer's report shows that these inquiries do not appear to have been made and, as stated above, we request that they are made before the order is made to save everyone the time and expense of a local hearing or inquiry if evidence of a diversion or extinguishment is discovered. In the meantime, we would be grateful if the Council could send us extracts of the Definitive Map statement for paths numbered Seighford 32, Seighford 34 and Creswell 1. We believe that, because of the national lockdown, it is not possible to inspect the Definitive Map Statement at the Council offices but please let us know if our assumption is wrong.

In respect of the evidence set out in the report to the officer, out of the 3 Ordnance Survey plans, produced, only 1 shows the claimed route and the latter 1925 plan does not show the route at all. The routes on these plans are not entirely consistent with the alleged

footpath. The extract from the book published in 2000 refers to a footpath and a former footpath but provides no information as to the line of that footpath and whether or not it has been extinguished.

In light of the above, we believe that there is insufficient evidence to show that the claimed footpath has been reasonably alleged to subsist and there is evidence to indicate that it has been extinguished or diverted. We therefore ask that the panel either declines to make the order or at least defers its decision until the investigation described above has been undertaken.

I would be grateful if you would consider changing your recommendation and if you would ensure that this letter and enclosures are put before the panel before it makes its decision. Please do not hesitate to contact me if you have any queries about this letter or if I can assist in any way.

Yours sincerely



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My Ref: LH627G

Your Ref:

Date: 23 March 2021

Dear Ms Lovejoy,

RE: Alleged public footpath between Eccleshall Road footbridge over River Sow, Creswell Parish

Thank you for your letter dated 12 February 2021 regarding the draft report in relation to the above application. Your comments have been noted.

We note that your client's great grandfather, Mr John Henry Hilderley brought Creswell Farm in 1927 and it is noted that the Finance Act material included in the report dated 1911 confirms that at the time this document was completed a H Hilderley was the occupier of the land and a G Elliot Meakin was the owner. Documentation shows that following the death of G Elliot Meakin in 1927 the Hilderley family took over ownership of Creswell Farm.

We further note that New Lodge was built in 1914 and that a gate was erected between Keepers Lodge and New Lodge and a fence put around the gate, which obscured use of the alleged footpath.

The Ordnance Survey map you have provided dated 1923 does not show the alleged route. The 1910 Finance Act material dated 1911 shows a route running along the same line as the alleged route with the depiction FP and the route is also referred to in the Field Book as a public footpath. Due to the severe penalties people faced if they were found to have made a false claim, it is unlikely that the landowner would have made a claim for the public footpath unless it was well founded.

Therefore, it appears that during the period between 1911 and 1923 the route has ceased to be in existence, or it has not been deemed significant enough to be included on any maps.

Whilst, we note that your client objects to the application on the grounds that there is a strong likelihood that the alleged route was diverted or extinguished before 1923, no legal document has been put forward to confirm that the route was extinguished or diverted.

The Council has looked into Parish Survey Cards for the area of Creswell and neither the parish cards nor plans have any reference to a path along the same line as the alleged route. No legal or other document or map evidences the alleged route. It appears that the alleged route appears on ordnance survey maps for approximately 20 years and then the route disappears.

We note on the Ordnance Survey map dated 1923 provided by yourselves and the Ordnance Survey map dated 1925, which is commented on in our draft report, they do not show the alleged route but there is a route with the depiction FP running along the same line as what is now Creswell 1, which is recorded on the map as a public bridleway. Although Creswell 1 runs near to the alleged route there is no clear evidence that the alleged route has ever been diverted to become Creswell 1. Seighford 32 and Seighford 34 are also recorded as public bridleways on the Definitive Map and there is no evidence that these routes were previously the alleged route.

Overall, we conclude that between the years of 1902 and 1911 there is evidence of the existence of the alleged route and that when the lesser test of reasonable allegation is considered, the evidence of the Finance Act material supports that the alleged route was a public footpath.

By 1923 there is no evidence that the alleged path is still in use or existence and this may coincide with the construction of New Lodge in 1914. However, there is no clear evidence that the route has ever been legally extinguished or diverted, it may be that the route fell into disuse and therefore was no longer deemed a significant enough route to be included on maps.

Whilst we acknowledge your client's comments and objections, in light of the fact that there is no clear evidence that the route has ever been legally extinguished or diverted, the maxim "once a highway, always a highway" applies and therefore we will not be changing our recommendation.

Yours sincerely

H.J.Titchener

Hannah Titchener
for Director of Corporate Services

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