

**BOWCOCK & PURSAILL**  
SOLICITORS

P.O.Box No. 1, 54, St.Edward Street, Leek, Staffordshire, ST13 5DJ  
Tel: Leek (01538) 399199 Fax (01538) 399362 DX 16352 LEEK

COUNTY CLERK
REFER TO .....
COPY TO .....
23 FEB 1996
REF: .....

The County Clerk & Chief Executive,  
Staffordshire County Council,  
P. O. Box 11,  
County Buildings,  
Martin Street,  
STAFFORD, ST16 2LH.

Your Ref: 4/MWB/lmb/19/11.146

Our Ref: 10/DM

21 February 1996

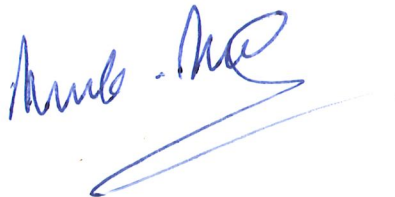
For the Attention of Mr. Bradbury please.

Dear Sir,

Alleged public footpath at the rear of Ox Pasture, Cheddleton.

Following the telephone conversation with Mr. Bradbury as to the present position we enclose a statement by Mr. P. P. Bowcock. As you see the owners will object to the designation but would agree to a concessionary footpath.

Yours faithfully,



Enc.



PHILIP PARNELL BOWCOCK of Smith House Park Lane Endon Stoke-on-Trent Staffordshire ST9 9JA STATES as follows:-

1. I am a retired Solicitor. I am a part time Chairman of the Medical Appeal Tribunal and the Disability Appeal Tribunal in the Midlands and of the Agricultural Land Tribunal in South East England. I am a Director of the Leek United Building Society.

2. I am the eldest grandchild of the late Solomon Bowcock who died on the 20th of February, 1951. His executors were my father Henry Bowcock, my uncle Philip Thornley Bowcock and their brother-in-law Arthur Frederick Finney. All three have died. The last to die was Philip Thornley Bowcock and any part of the estate of Solomon Bowcock which remains unadministered vests in Philip Thornley Bowcock's executors who are his widow Sylvia Mary Bowcock and Thomas Harry Ball, both care of Bowcock & Pursaill of 54 St. Edward Street Leek Staffordshire ST13 5DJ.

3. There are seven beneficiaries of the estate, two with a share of one third each, two with a share of one ninth each and three who divide the remaining one ninth share. Solomon Bowcock bought some five acres of land which include the footpath in question on the 1st of June, 1931. On the 23rd July, 1931 he sold a triangular field containing two acres and one rood to George Arthur Lymer. This is described as being bounded "on or towards the east by a public footpath, on or towards the south by a private footpath belonging to the Vendor, and on or towards the west by other land of the Vendor". There is still a public footpath to the east going past the Rectory to the Church and Mr. Lymer's butchery. It has been tarmaced. On the south of the plan there is shown a private footpath six feet wide. A copy of the Conveyance and the plan attached is annexed to this statement. The land over which the public right of way is alleged to





exist clearly comprises this private footpath.

4. The first that the beneficiaries and trustees knew of the existence of this strip of land was a letter from Messrs. O'Donnell & Co. on the 5th of February, 1993 acting on behalf of the Lymer family from Cheddleton who needed to establish the ownership. They supplied the copy of the Conveyance of the 23rd July, 1931. Subsequently there were negotiations with Messrs. Charltons of Biddulph on behalf of Messrs. Alcock and Bailey Builders who were seeking planning permission over the field to the north of the footpath. Access had to be from Ox Pasture across part of the garden of Mrs. Broster and then across the private footpath at its eastern end. All parties have accepted that the six foot strip was part of the estate of Solomon Bowcock. It is evident that this was retained to provide access to the rear of the Ox Pasture houses. The plots were sold off and the strip remained undisposed of.

5. In 1993 it was understood that the County Council was supporting the proposed development to assist it to gain access to a field to the east of Mr. Lymer's field. However, plans changed and an application for planning permission was refused. It is understood that there is an appeal pending by Alcock and Bailey.

6. I first inspected the land on the 10th of February, 1993. Mrs. S. M. Bowcock inspected at much the same time. We both noticed that it was considerably overgrown, even though it was the season of the year when the vegetation is at its minimum. There was evidence of the path being used but it seemed that this was for the purpose of obtaining access to the rear of the Ox Pasture houses, which was apparently its purpose. There was certainly no evidence of the heavy use for through foot traffic which would be implied by the statements which have been supplied to the County Council. When inspected recently the path had been cleared. The Clerk to the Parish Council



has confirmed that at no time has the Parish Council gone on to this private land to clear it so the work must have been done by individuals trespassing on to private land. If permission to clear had been sought it would have been given.

7. The present application appears almost certainly to have been inspired by the current planning dispute, the applicants apparently hoping that it will give them some leverage in resisting the development of Lymer's field. A number of the applicants claim to have used the footpath over many years. When designation was being actively undertaken following the 1959 Act no action was taken either by the residents or by the Parish Council. The absence of earlier action leads to the conclusion that it is the extraneous planning dispute which has led to the present application.

8. From the strip of land there are attractive views to the Roaches to the north. The owners have no objection to local residents strolling along the path as an amenity. They would never have granted a right of way, even if they had known about it, since that would have been quite pointless. There is an excellent pavement parallel to it only the other side of the Ox Pasture houses.

9. The presumption set out in Section 31 of the Highways Act 1980 is negated in this case. It is specifically stated that the presumption does not apply when the way is of such a character that use by the public could not give rise at common law to any presumption of dedication. Paragraph 78 Page 57 Volume 21 of the Fourth Edition of Halsbury Laws of England includes the following:

"User of a way is less cogent evidence of dedication if the landowner is non-resident, at any rate if he has no agent upon the spot, than if he is resident, for he did not know that the way was being used no inference can fairly be drawn from his non-interference."



Still less can such an inference be drawn when the owners did not even know until three years ago that they owned the land at all. So since the common law presumption does not apply neither can the statutory presumption.

10. Traditionally footpaths have a purpose, leading to a church, farm, place of work etc. "If a way leads nowhere (as in this case) this is a point for consideration and may rebut the presumption of dedication". (paragraph 76). Ox Pasture is the relevant road and in that context this footpath leads nowhere except to the rear of the Ox Pasture houses.

11. The owners are willing to allow this strip of land to be used as a concessionary amenity footpath by local residents. They will resist addition to the definitive map as a public footpath and in the event of the County Council making an order under Section 53(2) Wildlife and Countryside Act 1981 will appeal to the Secretary of State.

SIGNED .....  .....  
(PHILIP PARNELL BOWCOCK)

DATED ..... 22.2.96 .....  
.....







# This Conveyance

is made the *twenty third* day  
of *July* One thousand nine hundred and thirty one BETWEEN  
SOLOMON BOWCOCK of "Thornleigh" Westwood Road Leek in the County of Stafford

Building Society Secretary (hereinafter called " the Vendor") of the one  
part and GEORGE ARTHUR LYMER of Church View, Cheddleton in the said County  
of Stafford Farmer (hereinafter called " the Purchaser") of the other part  
WHEREAS the Vendor is seised in fee simple in possession of the  
hereditaments hereinafter described and also of other hereditaments adjacent  
thereto

AND WHEREAS the Vendor has agreed with the Purchaser to sell  
to him for the sum of One hundred and sixty eight pounds fifteen shillings  
the said hereditaments hereinafter described in fee simple in possession  
free from incumbrances but subject to the stipulations and conditions  
hereinafter appearing

NOW THIS DEED WITNESSETH as follows :-

1. In consideration of the sum of One hundred and sixty eight pounds  
fifteen shillings now paid by the Purchaser to the Vendor (the receipt of  
which sum the Vendor hereby acknowledges) The Vendor as Beneficial Owner  
hereby conveys unto the Purchaser ALL THAT piece or parcel of land  
situate lying and being at Cheddleton aforesaid containing two acres and one  
rood or thereabouts be the same more or less bounded on or towards the North  
by other land belonging to the Purchaser on or towards the East by a public  
footpath on or towards the South by a private footpath belonging to the  
Vendor and on or towards the West by other land of the Vendor which said  
piece or parcel of land is more particularly described and delineated on the  
plan annexed hereto and thereon edged with pink TO HOLD the same  
unto the Purchaser in fee simple subject nevertheless to the observance of  
the covenants by the Purchaser hereinafter contained

2. It is hereby declared that the Purchaser shall not be entitled to any  
right of light or other easements in respect of the property hereby conveyed  
so as to prejudice or interfere with the right of the Vendor or the persons  
Deriving Title under him to build upon any part of the adjacent land now  
belonging to the Vendor to such height as he or they would be entitled to  
build in the absence of any such right or easement

3. The Purchaser as to the land hereby conveyed and with intent to bind  
all persons in whom the said land shall for the time being be vested but





not so as to be personally liable under this Covenant after he has parted with all interest in the said land hereby covenants with the Vendor at all times hereafter to observe and perform the restrictions and stipulations set forth in the First Schedule hereto

4. The Vendor hereby acknowledges the right of the Purchaser to production and delivery of copies of the several documents specified in the Second Schedule hereto and hereby undertakes with the Purchaser for the safe custody thereof

5. It is hereby Certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Five hundred Pounds

I N W I T N E S S whereof the parties hereto have hereunto set their hands and seals the day and year first above written

THE FIRST SCHEDULE ABOVE REFERRED TO

1. <sup>permanent</sup> No building or other structure of any kind ~~whether permanent or temporary~~ shall within a period of fifty years from the date hereof be built erected placed or suffered to be upon any part of the hereditaments hereby conveyed
2. No hoarding advertisement posters or placards shall at any time be placed or suffered to be upon the hereditaments hereby conveyed
3. Not to use or suffer to be used the hereditaments hereby conveyed as or for a fair or show ground or for any other purpose which may be a nuisance or annoyance to the Vendor or to the owners or occupiers for the time being of the adjacent hereditaments
4. To permit the Vendor his servants or agents to construct and lay a sewer under the said hereditaments hereby conveyed at or near the Western boundary thereof for the purpose of draining such houses as may be erected upon the adjoining hereditaments belonging to the Vendor and so as to connect with the main sewer situate at or near the North Eastern corner of the property hereby conveyed and for this purpose to permit the Vendor his servants or Agents to have free access to the hereditaments hereby conveyed to make the necessary excavations for and to lay such sewer and for the inspection maintenance and repair thereof the Vendor doing as little damage as possible to the hereditaments hereby conveyed and forthwith making good all damage occasioned by such works

MS. (G. A. L.) 213

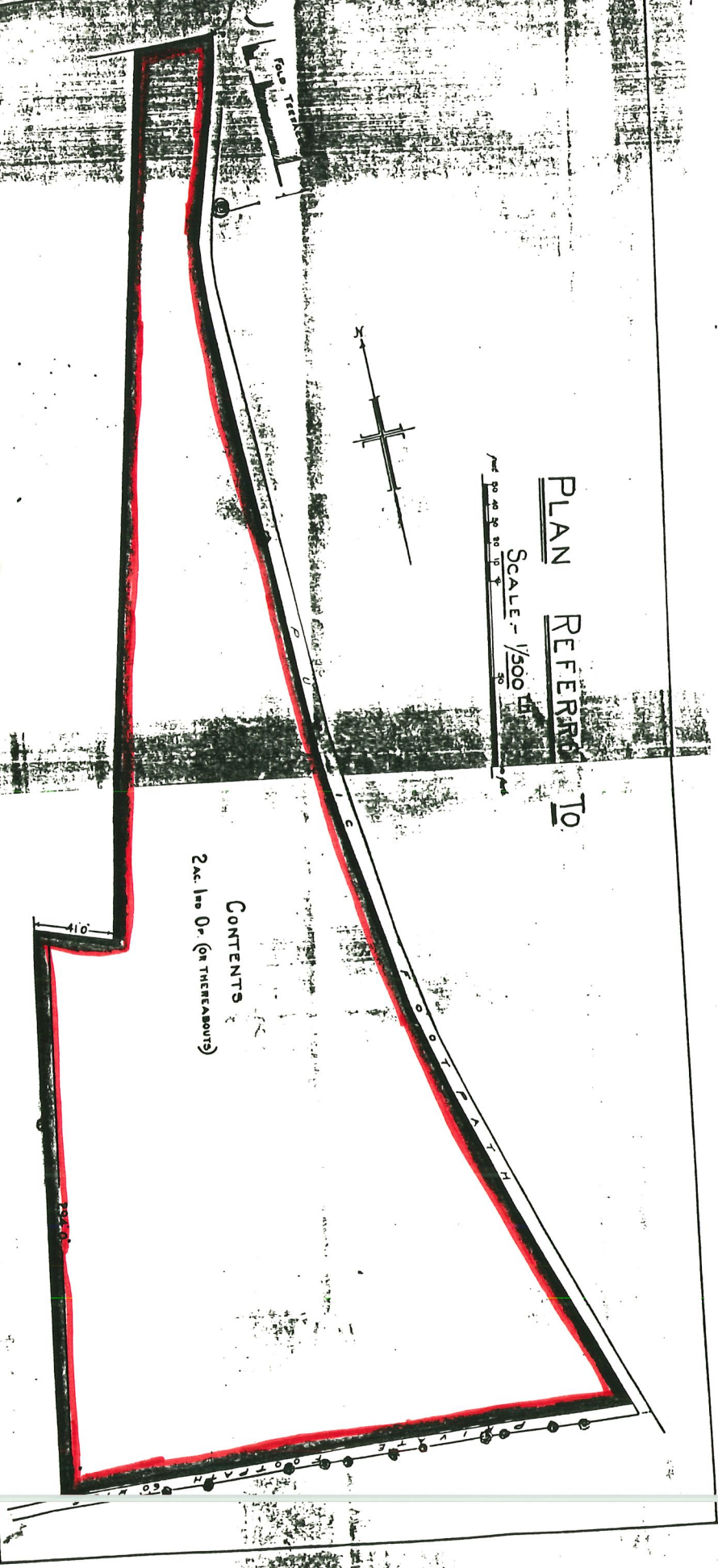


PLAN REFERRED TO

SCALE - 1/500 TH



CONTENTS  
2ac. 1sq. Or. (or THEREABOUTS)







5. Forthwith to erect (where necessary) and for ever hereafter maintain and keep in good repair along the Western boundary of the hereditaments hereby conveyed a good and substantial fence or hedge of such nature as to prevent straying of poultry, cattle, sheep or other animals on to the adjacent hereditaments of the Vendor and to maintain in good repair and condition such fence as shall be erected by the Vendor along the southern boundary of the hereditaments hereby conveyed

THE SECOND SCHEDULE above referred to.

24th November 1906.

INDENTURE of Conveyance made between Charles Harvey of the one part and the Reverend Alfred Herbert Boucher of the other part

4th November 1918

INDENTURE of Conveyance made between the said Reverend Alfred Herbert Boucher of the one part and Andrew Morton of the other part

1st June 1931.

CONVEYANCE made between Andrew Morton of the one part and Solomon Bowcock of the other part

SIGNED SEALED AND DELIVERED by the  
said SOLOMON BOWCOCK in the presence  
of :-

*A. Scriver*  
*Solicitor*  
*With Mr. P. T. Barwick*  
*Solicitor*  
*Leech*

*Solomon Bowcock*

SIGNED SEALED AND DELIVERED by the  
said GEORGE ARTHUR LYMER in the presence  
of :-

*A. Scriver*

*G. A. Lymer*





Dated 23<sup>rd</sup> July 1034.

Solomon Bourne Esq

to

Mr G. A. Symes

Conveyance

of  
a close of land situate at  
Speddington in the County  
of Stafford.

J. J. Bourne  
Esq.



# BOWCOCK & PURSAILL

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## SOLICITORS

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Tel: Leek (01538) 399199 Fax: (01538) 399362 DX 16352 LEEK

The County Clerk & Chief Executive,  
Staffordshire County Council,  
DX 712320,  
STAFFORD 5.



Your Ref: 4/MWB/jmg/19/11/146

Our Ref: 10/DM

15 April 1996

Dear Sir,

Alleged Public Footpath at the rear of Ox Pasture, Cheddleton.

We thank you for your letter of the 26th of March, 1996 and reply to the enquiry of the Clerk to the Parish Council as follows:

1. A public footpath across land inevitably reduces its value, the extent of such reduction depending upon the particular circumstances. In extreme cases it can make a property unsaleable.
2. The creation of a new public right of way as proposed in this case is a form of expropriation without compensation and as such immoral.
3. To convert a private footpath into a public one increases the number of people with a potential interest in the planning status of the land concerned. Their representations can affect the decisions of the Planning Authority, giving a false impression of the number of people with a genuine interest in the land concerned.
4. Mr. Lymer has pointed to the problems which he has in maintaining the fence along the strip of land in question. If the footpath were to be public it would be much more difficult for the Executors and Mr. Lymer to control the situation.

We should make it clear that Mr. P. P. Bowcock is in this respect a representative of the Executors of the estate of Solomon Bowcock deceased and personally has only a one ninth interest in the land.

Yours faithfully,

