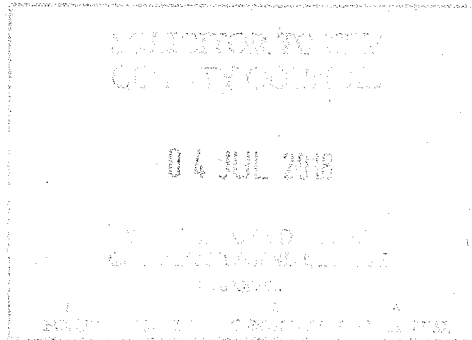


APPENDIX "G"

Date 3 July 2018
Our Reference ABRU1/KEE31/1286
Your Reference AW/LH610G
Please ask for Andrea Bruce
Direct Dial 01782 349511
Facsimile 01782 712522
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Knightsplc

Staffordshire County Council
DX 712320
Stafford 5



Dear Sirs

Application for Alleged Public Footpath Between A525 Keele Road and Lymes Road Keele made by Mr M Reay of Stafford on 21 April 1998 pursuant to the Wildlife and Countryside Act 1981, section 53 (5) for an order pursuant to section 53 (2) and (3) (c) (Application)

1. We represent the University of Keele, the landowner for the majority of the length of the alleged footpath and write on their behalf to **object** to the Application.
2. We have had the opportunity of considering the Report to the Countryside and Rights of Way Panel (**Report**), which sets out the basis on which the Panel must make its decision at paragraphs 13-16. The Panel is advised that it should consider whether on the balance of probabilities either (a) the alleged right subsists or (b) is reasonably alleged to subsist.
3. The Report concludes that that the alleged right subsists (paragraph 20). We do not agree with that conclusion, nor do we consider that the alleged right can be reasonably alleged to subsist.

Factual Errors in the Report

4. It is noted that the Report states that officers have undertaken extensive research. We were advised by telephone that this has involved considering the Quarter Sessions Records held at the Stafford Records Office, we believe, for the period 1814-1840 (although presumably given the statements in the Report this was to 1847 or later), as well as the evidence forms and the extracts from the book titled "History of Keele" provided in response to consultation by the Council. However, officers were not able to investigate the records noted as the Sneyd manuscripts at the Raymond Richards Collection held in the Library of the University of Keele.
5. The Report proceeds on the basis that the 1814 Quarter Session diverted a public footpath, *the new route being the alleged path*, (our emphasis; paragraph 11). This is not correct. The new

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route is the alleged footpath in part only. This is clear from the Application, which claims the "green line" and says "The red line is the remaining section as on the order. I am not claiming that section because this would create a cul de sac section terminating at the motorway."

6. The failure to acknowledge that the 1814 Order is for a longer length of path is significant as it demonstrates a misunderstanding of the history of the creation and stopping up of highways during the relevant period.

7. With the assistance of the Duty Archivist, we have investigated some of the Quarter Sessions Records at the Stafford Records Office and have also investigated some of the records referred to as the Sneyd Manuscripts at the University of Keele Library. We set out below a summary of our findings:

i. 1814 Footpath created from the drive at Western extent Upper Hall Field (old footpath diverted)

1814 Epiphany (reference Q/SB 1814 A/161-165) - *Justices' order to divert and stop up a stretch of footway in Keele, between the village of Keele and the villages of Butterton and Seabridge, and to make a new footway in lieu through grounds of the landowner, 17 Dec 1813; with consent of landowner, Walter Sneyd, 17 Dec 1813; justices' certificate of completion of new footway, 13 Jan 1814; and plan showing routes of old and new footways and site of Keele Hall, [1813]*

ii. 1814 Footpath created from Moore Lane to Turnpike Road; consent (old footpath diverted). This is the alleged path (and the additional length).

1814 Epiphany (reference Q/SB 1814 A/157-160) - *Justices' order to divert and stop up a stretch of footway in Keele, between the Newcastle to Betley road to a place in Moore Lane leading towards the Yew Tree in Whitmore, and to make a new footway in lieu through grounds of the landowner, 17 Dec 1813; with consent of landowner, Walter Sneyd, 17 Dec 1813; justices' certificate of completion of new footway, 13 Jan 1814; and plan showing routes of old and new footways, site of Keele Hall and gardens, some field names, [1813]*

iii. On or before 1832 - Diversion of Turnpike road at drive to Keele Hall. *Affects part of 1814 Footpath at ii. above, being the alleged footpath.*

Letter from Ralph Sneyd to H Vincent dated 30 August 1832 (reference SLRS/HWR] 43.): *"from the bottom of the last assent between Newcastle and my gates, I have thrown the turnpike road about a hundred or 150 yards more to the right, thus taking it round instead of over the hill and leaving me the whole of the left hand bank for plantations. This will be fenced by a wall of rough masonry and I am building a lodge of my own designing..."*

iv. 1834 Moore Lane - (highway) Stopped Up/Diverted on to the road known as Three Mile Lane.

Sep (Michaelmas) 1834 (Q/SB 1834/M/21-22):22/22a - *Justices' order to stop up a highway in the parishes of Keele, Swynnerton and Whitmore [Stoke], leading from near the Black Lion Inn on the road to Nantwich to Lane House in Whitmore, upon the completion of the new highway in lieu over the land of Ralph Sneyd, esquire, 9 Sep 1834; with plan showing route of old and new highways, marking the Black Lion Inn, Old Hall Farm and Lane House, scale 6 chains: 1 inch, 1834*

- v. 1834 Bridleway into which Moore Lane joins diverted onto new route

Sep (Michaelmas) 1834 (Q/SB 1834/M/21-22):23/23a - *Justices' order to divert part of a bridleway in the parishes of Keele, Swynnerton and Whitmore [Stoke], lying between Ram Lane and Oxhay Wood, and to make a new bridleway in lieu through the lands of Ralph Sneyd and Sarah Mainwaring, 9 Sep 1834; with plan showing route of old and intended new bridleways, marking Ram Lane and Ram Barn, Lane House, Penfields, Moor Lane Cottage and Oxhay Wood, scale 6 chains: 1 inch, 1834*

- vi. 1838 Lymes Road created (opened 1840) - a bridlepath (to gate and Far Rie Hay from Keele). Diversion of 1814 footpath at i. above.

Epiphany 1839 (Q/SB 1839 A/4) - *Justices' certificate after view, for stopping up part of a bridleway leading from Keele to Trentham through Keele Park, and to make a new bridle way in lieu, 23 Nov 1838; with: Consent of land owner, Ralph Sneyd of Stafford, esquire, 1 Aug 1838 Notice, 13 Oct 1838 'Staffordshire Advertiser' newspapers 20 Oct, 27 Oct, 3 Nov, 10 Nov 1838 Deposition of witnesses relating to bridleway, 23 Nov 1838 Plan showing existing and proposed bridleways through Keele Park, marking park lodges and lakes, site of Keele Hall, stables and avenue, some names of fields, and including sections to show gradients of the bridleways and Epiphany 1840 (Q/SB/1840 A/5-6) - /5 Justices' certificate of completion of a highway leading from Keele to Trentham villages, through various named fields, in lieu of the old highway now used as a bridleway, 26 Dec 1839*

8. The Report refers to Quarter Sessions from 1834 and 1847 containing material relating to public rights of way at Keele, but that they do not relate to the alleged footpath (paragraph 4). The Report fails to note that there is also material relating to public rights of way at Keele dating to 1838/1840, which suggests that the research undertaken at the Records Office may not have been as extensive as the officers thought.
9. It is to be noted that the alleged footpath referred to at ii. above is from "Moore Lane", which highway was authorised to be stopped up in 1834 on the construction of what is now Three Mile Lane. When this was done there would have been no access for the public to the alleged path from Moore Lane. The Application claims the alleged path from the byway open to all traffic which is known as Lymes Road, but this road was not opened until 1840.

10. It is further noted that part of the alleged path is shown as being on the turnpike road from Newcastle to Nantwich (**the turnpike road**). This is evident from the plan to the 1814 Order (Appendix C to the Report). The turnpike road however was itself diverted prior to August 1832. This is evident from the letter dated 30 August 1832 (copy enclosed) and from considering the alignment of the turnpike road as shown on Appendix C and the alignment of the A525 on Appendix B to the Report which shows the route of the alleged footpath. It can be seen that the alleged footpath does not follow the A525 nor join to it.
11. We comment on the significance of this with regard to the consideration to be made by the Panel under the heading of "Legal Error in the Report" below.
12. In addition, it is clear to us from our investigation of the Quarter Sessions Records at the Stafford Records Office that the records are incomplete. It is evident from the description of the records above (as provided by the Stafford Records Office) and our consideration of them that not all the information is retained. Sometimes in connection with a diversion there is available a stopping up order of the old highway, the creation of the new highway and the relevant landowner consent, but sometimes only some of them. For example, in relation to the 1838/40 diversion (vi. above) of the 1814 footpath (referred to at i. above) which created Lymes Road, only certificates are available, yet the Highways Act 1835 required also that an order be made. In relation to the 1834 diversion of Moore Lane the papers relating to the creation and completion of Three Mile Lane are not available.

Omission in the Report

13. The Report states that officers have reviewed the evidence referred to in the book, "History of Keele" and that this does not confirm that the route was ever extinguished. As officers only considered the Quarter Sessions records at the Records Office they can only be referring to this evidence here. No comment is made on the title map which is referred to and, which would be admissible as evidence that the alleged footpath did not exist. See, for example, *Kent County Council v Loughlin* [1975] 234 EG 681 and *Robinson Webster (Holdings) Ltd v Agombar* [2002] 1 P & CR 243. At the time of writing we have not been able to inspect the title map but intend to do so. The extract in the book is not sufficient for present purposes. It is not known if officers have inspected the title map.
14. We also understand the officers were not able to investigate the letters referred to in the extract from the book. We understand that officers had requested copies of some letters which referred to the creation of Lymes Road in 1838/1840, but did not request the letter which refers to the diversion of the turnpike road (dated to 1832). The University of Keele Library archive does not provide a copying service in respect of these papers. Neither of these events were mentioned in the Report. If these records had been considered officers may have had a better understanding of the inter-relation of the various rights of way at Keele.

Legal errors in the Report

15. The Report relies on the claim that the documentary evidence shows a footpath was created by a legal order and as there is no order extinguishing it then it exists to this day.
16. We consider this statement to be wrong in law.
17. First it states that as there is an order creating the alleged footpath, it can only cease to exist as a result of an order extinguishing it. Halsbury's Laws provides:

The common law rule is 'once a highway, always a highway'. The public cannot release rights once acquired, and no authority can bind the public in purporting to release those rights. Moreover, there is no extinctive presumption or prescription arising from non-exercise of those rights. However, a highway may be extinguished by natural causes, such as inroads of the sea or landslips. ...

A length of highway, moreover, even though not itself expressly diverted or stopped up, will be extinguished if public access to it at both ends is cut off by the destruction or lawful stopping up of the only highways leading into it.
18. The authority cited for this by Halsbury's Laws is *Bailey v Jamieson (1876) 1 CPD 329*, which case was approved in *Kotegaonkar v Secretary of the State for Environment, Food and Rural Affairs and another [2012] EWHC 1976 (Admin)*.
19. In 1834 when Moore Lane was diverted it was no longer possible to access the alleged footpath from either end, as the turnpike road had also been diverted. Consequently it ceased to be a highway at this point in time.
20. Secondly, this suggests that the only consideration, in deciding whether on a balance of probabilities, the alleged footpath subsists, or is reasonably alleged to subsist, is whether an order can be located stopping up the highway. We do not consider this to be the correct approach. The decision maker must balance the evidence for and against the subsistence of the alleged footpath.
21. We have demonstrated that the records relating to the Quarter Sessions are not complete; it is possible that there was a further order which can no longer be located or evidenced. It is clear from the plans and letters referred to in the history book that the development of the Keele Estate in the mid 19th century (by those with contemporaneous knowledge of the estate and the rights affecting it) proceeded on the basis that the alleged footpath did not exist. We attach an extract from a plan dated 1869, titled *Plan of The Keele Estate Situate in the Parishes of Keele, Wolstanton, Newcastle-under-Lyme, Stoke-upon-Trent, Trentham, Swinnerton, Whitmore and Madeley and County of Stafford and the Property of Ralph Sneyd Esquire*, held as part of the Sneyd Manuscripts, and on which Fig 9 in the "Landscapes and Gardens" chapter of the history book appears to be based. The footpath is not shown, and it is clear extensive planting has taken place where the alleged footpath would have been. We anticipate that the tithe map will not show the alleged footpath. We are also seeking to locate the plan prepared in connection

with the Finance Act 1910 which we again expect to support the fact that the alleged footpath did not exist at that time; we note that the council has not investigated this.

Route of the alleged footpath : insufficient plan

22. The plan provided for the Panel, and for the landowners affected by the alleged footpath, is not to a recognisable scale and it is not considered to sufficiently identify the line of the alleged footpath. It is not considered that there are suitable remaining reference points to enable the accurate mapping of the order plan from 1814. Consequently it cannot be considered that the current plan or any plan prepared as an order plan correctly shows the alleged footpath as dedicated in 1814.

Conclusion

23. The Report proceeds on the erroneous basis that the alleged footpath is the whole of the right of way shown on the 1814 Order.
24. The council's research is insufficient. It did not locate all of the available evidence relating to rights of way at Keele in the relevant period; it has not considered the tithe map or the papers referred to in the history book.
25. The council take the wrong approach in law. A highway may cease to exist other than as a result of a statutory order; in particular a highway will cease to exist if not accessible from either end from public highway. From 1834 the alleged footpath was not so accessible and so ceased to exist as a highway.
26. The council take the wrong approach in law by refusing to consider any evidence other than that comprising an order for the stopping up of the alleged right of way. This evidence demonstrates on a balance of probabilities that the alleged footpath does not exist or cannot reasonably be alleged to subsist.
27. The route of the alleged right of way cannot be shown correctly on the plan at Appendix 2; the plan is of insufficient scale to identify precisely the route and therefore the Panel cannot decide that a modification order for this route should be made.
28. The Order should not be made. If it is, the University intends to object to its confirmation and reserves the right to introduce further evidence at that time, both arising from the further information requested below, and its own investigations.

Further information to be provided

29. It is noted that the Report refers Panel members to, "the booklet entitled Guidance on the Consideration of Applications Made under Section 53 of the Wildlife and Countryside Act 1981".

It is not clear who publishes this document and we request a copy from the council so that we may be clear on the way in which the Panel is directing itself.

The Report also refers to a letter which accompanied the Application. The author and date of the letter is not identified and the letter is not provided. The applicant clearly relies on the contents of the letter, even if the council does not. We request a copy from the council.

Yours faithfully

Knights

Knights plc

Enclosures: copy letter dated 30 August 1832
copy of Plan of Keele Estate 1869

Date 11 February 2019
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Your Reference LH610G
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Mr M Murphy
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Staffordshire County Council
DX 712320
Stafford 5

Dear Sirs

Application for Alleged Public Footpath Between A525 Keele Road and Lymes Road Keele made by Mr M Reay of Stafford on 21 April 1998 pursuant to the Wildlife and Countryside Act 1981, section 53 (5) for an order pursuant to section 53 (2) and (3) (c) (Application)

We write with reference to your letter of 8 October 2018, received on 15 October 2018.

We understand your first paragraph to be drawing attention to the fact that Lymes Road was a diversion for the other public footpath created in 1814, which footpath intersected the alleged public footpath, and that consequently, even if there were a period when the ends of the alleged public footpath did not connect to another public highway, it would still have been accessible from the public highway network via the other public footpath created in 1814. This is accepted and we no longer seek to rely on *Bailey v Jamieson* (1876), as approved by *Kotegaonkar v SSEFR* (2012).

However our clients maintain their objection to the addition of the alleged public footpath to the Definitive Map and Statement. We do not repeat here the other grounds of objection from our letter of 3 July 2018, but these are still considered relevant; for example, the Quarter Sessions Records are incomplete and the alleged public footpath is not referred to at all in any maps produced of the Keele Estate in the latter part of the century, or thereafter.

In addition, we have queried the Council's ability to map the route of the alleged public footpath. This is particularly relevant in light of the DEFRA Public Rights of Way Circular 1/2009 which states "Authorities should include sufficient accurate information to allow the way to be unambiguously identified". We enclose a Report by Mike Taylor, Public Rights of Way Consultant dated 15 January 2019. You will note the conclusion as follows:

"...it is reckless for the County Council to proceed on the basis of an 1814 plan that lacks detail, scale, geographic and topographical accuracy and infer that the route shown on it can be transposed onto modern maps with sufficient accuracy to allow it to be recorded on the Definitive Map without adequately demonstrating that process and without any other evidence".

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The Report by Mr Taylor considers the difficulties of identifying the alleged public footpaths northern termination, southern termination and the alignment in between and we refer you to it.

The "map" provided with the Council's letter of 8 October 2018 does nothing to demonstrate how the Council have been able to extrapolate the 1814 Order Map to show with sufficient accuracy where the alleged public footpath runs. The Council have still failed to provide the map/plan which would be attached to any Order for consideration by those affected by it. The Council need to explain how it has addressed the issues of mapping identified in Mr Taylor's report. The process undertaken by the Council needs to be rigorous, accurate and capable of confirmatory testing. Otherwise we do not consider that the Council are able to make the Order as it is not possible to determine the alignment and location of the alleged public footpath with sufficient accuracy to meet its obligations in that regard. Without prejudice to the contention that the alleged public footpath cannot be adequately identified, we would observe that Mr Taylor refers to the fact that the alleged public footpath as shown on the 1814 Order Plan extends beyond that sought by the applicant, as advised by the applicant. The Council's duty under section 53 is to keep the Definitive Map and Statement under review and as soon as reasonably practicable after the occurrence of any of the events set out, make such modifications as appear to the Council be requisite in consequence. If the Council is to make an order adding the alleged public footpath from Lymes Road to the A525, it should also add the route from Lymes Road to its end in the vicinity of the M6 motorway.

We understand that this matter will now be reported to the Rights of Way Panel and we would be grateful to receive advance notification of that meeting and a copy of the Report on this matter in due course.

Yours faithfully

Knights

Knights plc

Enclosures: report

ACCESS COUNTRYSIDE CONSULTANCY LIMITED

INVESTIGATION OF SCHEDULE 14 APPLICATION TO REGISTER A PATH AT KEELE UNIVERSITY, STAFFORDSHIRE.

Date: 15TH January 2019

Report of: Mike Taylor, Consultant, Access Countryside Consultancy Ltd.

Subject/Title: Wildlife & Countryside Act 1981– Part III, Section 53:
Application for the Addition of a Public Footpath between the A525 Keele Road and Lymes Road Keele.

1.0 Introduction.

- 1.1 I have been instructed by Knights Solicitors, Newcastle Under Lyme on behalf of Keele University to undertake an assessment of the case to be considered for determination by Staffordshire County Council.
- 1.2 The case considers an application made by Mr M Reay of 53 Tithe Barn Road, Stafford in 1998. The application is made under the provisions of Wildlife and Countryside Act 1981 s53. It is assumed that the application has been correctly made and the local authority has responded correctly in registering it.

2.0 Background.

- 2.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.
- 2.2 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Staffordshire County Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.
- 2.3 One such event (section 53(3)(c)(i)) requires modification of the map by the addition of a right of way.

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...;

The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the 'balance of probabilities' the alleged rights subsist or are reasonably alleged to subsist. **Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision and legally cannot be considered in the decision making process.**

2.4 In this case the evidence submitted is entirely documentary evidence, relating to Quarter Sessions Special Session Order and accompanying plan of 1814. There is no other evidence submitted by the applicant.

2.5 "Quarter Sessions" refer to the meetings of Justices of the Peace which existed before the County Courts came into being following the Courts Act 1971. The Justices of the Peace were responsible for highways management prior to the county councils adopting highway authority powers in 1895. Amongst their functions was a power to divert and stop up highways. This order was determined at a "Special Session" of justices meeting to consider the one particular highways matter in isolation.

2.6 Evidence submitted in cases such as this can carry varying weight. The strongest evidence is provided by an Act of Parliament or a legal event such as a court order, as is the case here. Such a legal event is binding and in the absence of a subsequent legal event which further diverts or extinguishes the highway in question then the highway still exists in law.

3.0 **Analysis of the evidence submitted by the applicant.**

3.1 The special Sessions records submitted by the applicant deals with the diversion of a footpath and consists of the written description of the affected routes, a declaration by the landowner, the Order title sheet and accompanying plan.

3.2 The plan accompanying the Order exhibits many defects and is lacking in many respects insomuch as it is little more than a sketch plan making its use to locate the alignment of the path on the ground today problematic.

3.3 The plan has neither scale nor northing. A basic analysis of the construction of the plan suggests that the scale depiction of features and landmarks may not be consistent across the extent of the plan. By analysis and comparison of the few identifiable landmarks it is possible to determine that north is skewed some 15 to 20 degrees west of what would conventionally be north at the top of the plan. The representation of field boundaries is at best an approximation and the representation of roads is equally far from accurate. The lack of geographic and topographic accuracy makes the ability to locate the path with

any degree of accuracy extremely difficult such that it questions the ability of the County Council to make an Order based on this information.

3.4 Compounding the lack of clarity of the Order plan are two things. Firstly there is little contemporary and subsequent mapping that may support the Order plan, indeed no other map or plan discovered shows the path that is set out on the Order plan. Secondly the Keele estate underwent an extensive programme of re-landscaping and re-development in the mid 19th century to such an extent that the landscape at the turn of the 18th and 19th centuries would be completely changed and unrecognisable 50 years later.

4.0 **Analysis of later plans and maps.**

4.1 A number of other maps are available which portray the area of Keele and the Keele estate. These were created for a variety of purposes and are of varying assistance. They are;

a).1834 Order plan for the diversion and stopping up of Moore Lane, an all-purpose highway to the south of Keele. The plan is produced to a higher standard of cartography than the 1814 Order plan and includes more accurately recorded landscape features and field boundaries.

b).1837 Plan of roads in the Keele to Trentham area including field boundaries and other landscape features to the south of Keele.

c).1840 Order plan for the diversion and stopping up of Lymes Lane, again to the south of Keele. This Order plan is also produced to a higher cartographic standard and incorporates more accurate landscape features and field boundaries.

d).1840 Plan of roads in the Keele, Newcastle and Trentham areas. A small scale skeleton map showing primarily the road network with little other detail.

e).1849 Keele parish Tithe Map. This is a skeleton map of the area only, presumably due in large to the very small number of landowners with the majority of the parish being in the ownership and occupation of the Sneyd family. Whilst presumably accurate the map shows very little topographic detail with few landscape features, field boundaries or place names.

f).Ordnance Survey 6inch and 25 inch maps. The examples available at the Stafford Record office are later editions towards the end of the 19th century which show the results of the landscape changes implemented by Ralph Sneyd. Whilst these are highly detailed and accurate maps the extent of the landscape re-modelling that has occurred severely affects their utility as vehicles to identify the alignment of the claimed path from the 1814 plan.

4.2 Using field boundary evidence from the 1814 Order plan and subsequent more accurate Quarter Session Order plans of 1834 and 1840 for the diversion and stopping up of Moore Lane and Lymes Road respectively it is possible to establish the location of the southern termination of the footpath with a reasonable level of accuracy. The termination point identified by the field boundary layouts on the 1814 plan and the above plans can then be established on more modern OS maps using woodland outlines extant on the 1834 and 1840 plans as well as the OS 6 inch and 25 inch plans along with the alignment and conjunction of Whitmore, Swynnerton and Keele parish boundaries. Whilst this is not an entirely scientific approach it does allow the

termination point to be located with some confidence at approximately OS grid reference SJ 8102 4415 just east of Keele services and approximately 120m north of the M6.

- 4.3 Other than the 1814 Order plan there are no other maps that record any evidence of the path and the lack of comparable landscape features on subsequent maps north of Lymes Road prior to the advent of Ordnance Survey maps and south of Lymes Road on Ordnance Survey maps due to the landscape re-modelling that occurred in the mid-19th century makes the accurate identification of the alignment of the path further north very difficult.
- 4.4 The area of the location of the northern termination point of the path is easier to establish, however the exact point cannot be established. Whilst the landscape features of the track to what became Home Farm and the turnpike road on the 1814 Order plan can be readily identified on later maps there are discrepancies that prevent an accurate identification of the termination point. The 1814 Order plan shows the path running from point A westwards for an indeterminate distance along the Turnpike Road to a point west of a field called "Barn Pavilion Field", whereupon it turns in a more south westerly direction away from the road. On the plan accompanying Mr Reay's claim and on the plan created by the County Council the path is shown striking immediately away from the current A525 road at point A. The alignment of the Turnpike Road on the 1814 plan does not correspond with the alignment of the road on later maps and the road has clearly been further re-aligned in very recent times to create the current university access road and roundabout. The extent to which earlier re-alignments have occurred will affect the ability to accurately locate the path alignment at this point and may also reveal that the path on the 1814 plan is not currently connected to a highway at this point.
- 4.5 The location of the alignment of the path between its northern termination and southern termination are much more difficult to identify. The extent of the landscape re-modelling that was undertaken by Ralph Sneyd in the mid-19th century prevents the identification of any landscape features that appear on the 1814 Order plan. From the point west of point A on the Order plan where the path leaves the turnpike it appears to run to its southern termination point in a straight line with a turn to a southerly alignment approximately half way along its length. Closer inspection reveals that the more northern leg has a south easterly kink which is not identified on the map accompanying Mr Reay's application. Any lack of consistency and relative positional accuracy in the internal construction of the Order plan will negate the alignment plotted by both the applicant and the County Council. I will return to this below.

5.0 Commentary on the committee report.

- 5.1 The report does not make any attempt to apply any forensic analysis of the evidence submitted by the applicant and appears simply to accept it on face value. Given the weaknesses of the Order plan and the lack of any other evidence this is not acceptable.

- 5.2 If the applicant had submitted any additional evidence to confirm the alignment of the claimed route then the case would be much stronger. Evidence could comprise either user evidence to show an established route on the ground or other later documentary evidence confirming the existence of the path. In the absence of any other evidence the application must live or die by the 1814 Order and plan which is both a strength and a weakness. On the one hand it is strong evidence in so much as the 1814 Order is a matter of legal fact so cannot be disputed especially in consideration of the principle *All things are presumed to be lawfully done, until the contrary is proven*. The weakness of the application is that because the applicant relies on no other subsequent map evidence the limitations and contradictions of the 1814 Order plan make it difficult to establish where the footpath should run on the ground or where it should be plotted on a current map with sufficient accuracy.
- 5.3 It is clear from the Order and plan that the footpath extends much further south beyond its claimed termination point on Keele Byway Open to all Traffic 11. If the applicant is relying on this evidence and if the County Council is accepting it then the council must accept it in its totality, warts and all, and as a legal fact the extent of the path depicted in the Order and plan should be acknowledged by the council and a path to its full southerly extent to a termination point adjacent to the M6 be recorded.
- 5.4 In view of the above the County Council report and recommendation should include either additional evidence discovered by the County Council, defer the determination pending the applicant submitting either further evidence or evidential justification to demonstrate how the alignment of the path is established on a current map or refuse the application.

6.0 Legal Background.

- 6.1 DEFRA Public Rights of Way Circular 1/2009 para 4.16 states, "Authorities should include sufficient, accurate information to allow the way to be unambiguously identified." The reliance by the applicant on the 1814 Order with all its inadequacies makes it impossible for the County Council to determine the alignment and location of the claimed route with sufficient accuracy to meet that requirement and record it on the Definitive Map
- 6.2 The matter of the level of accuracy required to fulfil the above has been considered in only a few cases, none of which considered sufficiently parallel circumstances to be particularly helpful. In *Perkins v DEFRA and Hertfordshire County Council 2009* the court considered whether the Order made by Hertfordshire County Council accurately identified the route of a footpath over the applicant's land. The judge said. "*Where, as is often the case, the existence of the right of way is shown by historical maps of varying quality, vintage and produced for varying purposes, in my judgement, there is certainly no requirement in law to show the route with a greater degree of particularity than can be justified on the basis of the available evidence.*" A more recent case, *Roxlena Ltd v Cumbria County Council 2017* had cause to

consider a similar claim that the evidence available precluded the accurate recording of the path such that the Order could not be made. The Roxlena case relied on similar interpretations as the Perkins case. The courts were however consistent in that both concluded that it was for the order making authority or an inspector to make a judgement on the best evidence they had rather for the courts to interfere. In both cases the level of evidence was that the path in question was recorded on a variety of early large scale Ordnance Survey plans but it was claimed that did not provide sufficient detail to adequately record the paths on the ground or that they conflicted with paths as used on the ground. Given that in this case the applicant is relying on an 1814 plan of very inferior quality to an Ordnance Survey plan then the considerations of the court may not apply in the same way, albeit that a court would probably still affirm that the decision making body remains either the order making authority's committee or an inspector appointed to determine the matter if an order is objected to.

7.0 **Recommendations and conclusion**

- 7.1 The County Council should be challenged and/or the Councillors of the panel hearing the case should be challenged to explain the process that has been undertaken either by the applicant or by the County Council to check the accuracy of the 1814 Order plan and extrapolate from that the location of the path on a current map and on the ground. The Council will need to be able to demonstrate that the process is rigorous, accurate and capable of confirmatory testing.
- 7.2 If the Council is intent on making an order it should be pointed out to that the 1814 Order route does not terminate at Keele By 11, (Lymes Lane) but continues to a point adjacent to the M6 and that if they are intent on making an Order to add the path to the Definitive Map it should be for the entirety of the route.
- 7.3 In summation. As it stands it is reckless for the County Council to proceed on the basis of an 1814 plan that lacks detail, scale, geographic and topographical accuracy and infer that the route shown on it can be transposed onto modern maps with sufficient accuracy to allow it to be recorded on the Definitive Map without adequately demonstrating that process and without any other evidence. Therefore the County Council should either defer the case until their officers or the applicant demonstrate the accuracy of the 1814 plan or provides additional evidence, or refuse to make an Order.

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