

## **Response to Definitive Map Modification Order Application Statement from Stephanie Clarkson legal officer**

### **The Application**

This provides a helpful summary on behalf of Staffordshire Moorlands Bridleway Group (SMBG) but no further evidence.

### **The Route**

The route is that with which the council concurs.

### **Additional Historical Evidence**

#### **Early County Maps**

The representative refers to names of roads which are not listed or identifiable on the early maps and does not provide evidence regarding the claim that the Ashbourne to Leek Road followed the old Milk Hill road. The representative directs us to a route listed as No 34 on Mayfield Rural District Council's (handover Schedule under The Local Government Act 1929 (LGA 1929)) (the Addendum's Appendix 7) as being one of 4 main routes into Calton. There is however neither a plan with Appendix 7 or any further evidence that it was a main road. It is unclear who drafted this Appendix, when it was drafted or who noted that the Northern section from the A523 to C0166 Stoney Lane is a "green hollow way"

- Extract of County map by John Cary dated 1805 Appendix 1 -The representative has highlighted what she considers to be the old road from Milkhill House to Stoney Lane although the extract of County Map by John Cary of 1805 is not clear. There does appear to be a physical feature which could possibly be interpreted as a route between Milk Hill House and Stony Lane.
- Appendix 2 being an extract from Greenwoods map of 1820 however does appear to show the same route/ physical feature as Cary's map which could be interpreted as a route between Milk Hill House and Stony Lane

The representative provides information on the weight of these maps considering that the likelihood was that it would be a public way.

The plans may show a route (which may or may not be Stony Lane). The courts have considered the evidence of old maps and found that while the weight of evidence attached to these was small they were suggestive of higher rights than footpath (Ridley v Secretary of State for the Environment [2009] EWHC 171).

The Planning Inspectorate Consistency Guidelines section 12 para 45 quote Christine Willmore regarding old maps: "*What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error ... consistent depiction over a number of years is a positive indication.*" This approach has been approved by the courts Fortune v Wiltshire Council [2012] EWCA Civ 334

There was however a great deal of plagiarism in that mapmakers would sometimes copy the work of earlier maps thus reproducing errors.

The representative has provided at Appendix 3 a plan which assists with our understanding of the road layouts.

The extract from "Carlton is my Dwelling Place" by David Swincoe (at addendum Appendix 4). There is no plan which assists with the landmarks. The first couple of highlighted paragraphs just explain the location of the old and the new Toll Road. The

second highlighted paragraph just explains the difficulty of using the old road in Winter. The third highlighted paragraph refers to the new tollhouse but does not add any further evidence.

The fourth paragraph makes a claim that a little way past the turning up Stoney Lane there is a public footpath opposite the lane to Broadhurst Farm. This footpath used to be a continuation of the lane via Broadhurst from the old toll road prior to 1824. Whilst this is pertinent to the route there is no evidence to support the claim made within the book.

### **Ordnance Survey Maps**

Appendix 5 was not provided (Ordnance Survey Sheet 12) dated 1897 and therefore no comment can be made.

### **1835 Highways Act**

At present the current PF76 is not listed as a route that is maintainable at public expense. Part of the route from the A523 to Milk Hill has remained at public expense being a Green lane. It is unclear what the representative is suggesting although your Officer infers that she may be implying that based on the 2 plans provided the route should be publicly maintainable.

### **Local Government Act 1929 Handover Map and Schedule**

Your Officer's report explains the situation between the two sections of the route between Stony Lane and the A523 and the A523 and Milk Hill House which have 2 different statuses. Footpaths before 1960 can be maintainable at public expense.

Appendix 6 is a plan of the handover Schedule illustrating that one part of route number 34 is used by traffic and one section of the route is footpath. This is the current situation and reflects the plan in the report's Appendix D. As has been explained in paragraph 18 to 25 of the report, two different statuses of route are not incompatible and both a footpath and track can be maintainable at public expense under the moniker of "road". Appendix 6 does not provide any further evidence of status.

Appendix 7 as already mentioned is a table entitled LGA 1929 Extract of Mayfield Rural District Council Handover Schedule for parishes not combined into Waterhouses Parish. There is however neither a plan with Appendix 7 or any further supporting evidence that it was a main road. It is simply a statement. It is unclear who drafted this Appendix or when it was drafted. This evidence therefore has no probity.

Appendix 8 is a further plan of the routes which were handed over to Staffordshire County Council. This plan does not provide any further evidence of status.

### **Staffordshire County Council: Survey of Rights of Way Waterhouses Parish Record Card for PF 76 dated 30<sup>th</sup> June 1951.**

The representative has given a contemporary account of the footpath since it was recorded in 1951. She has also pointed out that the first sentence of the Parish Survey card refers to Footpath 76 but the following sentence refers to another Waterhouses Footpath. The representative believes that the route has been an old road due to it having characteristics of having a visible hollow way in the fields and the remains of a walled track at the northern end. This however is speculative and of little probity. Your Officers would further point out that although the gate on to Stony Lane is described as a "cartgate", the path symbol is "FP". The surveyors at the time therefore did not consider the route to carry any higher rights (otherwise the symbol would be CRF (cart road used as a footpath) RP or RUPP (Road used as a Public Path))

## **Conclusion**

Your officers do not believe that the evidence supplied is sufficient on the balance of probabilities to change the current recommendation. While the representative has provided 2 further maps dated 1805 and 1820 showing a possible route (although your officers are not confident that it does show the current PF76) your Officers consider that this evidence is not influential enough in its own right, and without further supporting evidence is insufficient to change the current decision.