

7 November 2021

Hannah Titchener
Legal Officer (Property and Development)
Staffordshire Legal Services
Staffordshire County Council
2 Staffordshire Place
Tipping Street
Staffords
ST16 2LP

Dear Hannah

Response from Staffordshire Moorlands Bridleways Group to Staffordshire County Council's draft report for DMMO application to upgrade Footpath 35 Ipstones (Brown Edge Lane) to a bridleway - Reference No 002369DW

Thank you for emailing me the draft report and appendices for the above application. Staffordshire Moorlands Bridleways Group (SMBG) comments are as follows:

Para 7 - states "Officers have reviewed the Bradnop Inclosure Award of 1769 at Staffordshire Records Office. The document is very old and in parts is difficult to read. Parts of the Award are missing and part of the wording of the preamble is missing".

I sent an email on 26 October to you advising that Staffordshire Record Office held a transcript of the Bradnop Inclosure Award - Record Office Reference No. 3644 described as "typescript transcript from original document while it remained in private hands". I hope that you have viewed this document and that this can help with the exact wording of it so that members of the CROW Panel are fully aware of the facts.

Para 17 - states "it is clear that *the alleged route is an existing route as it is described* (in the Inclosure Award) *as an ancient lane*"

Para 18 - states 'There is nothing in the text (of the Inclosure Award) that specifically clarifies the status of Brown Edge Lane other than it connects to a Public Horse Carriage and Drift Road. It is unlikely that a highway would be connected to a route with lesser rights and therefore based on the award there is a significant likelihood that Brown Edge Lane would have been used as a "Public Horse Carriage Road" and therefore have bridle rights over it but this is not conclusive".

SMBG considers that the description of the route as an ancient lane, and particularly the fact that this connects to a Public Horse Carriage and Drift Road is evidence that the route is significantly likely to have had the same status i.e. a Public Horse Carriage and Drift Road and as such should be considered for an upgrade to a restricted byway. The application submitted by Mr Brian Smith to upgrade this route to a bridleway should be its minimum status. Your reference to the status being not conclusive is the incorrect test as to whether a route should be upgraded - SMBG as applicant has to show that on the balance of probabilities that it is more likely than not that the De-

definitive Map and Statement showing this route as a footpath is wrong. The Enclosure Award is strong evidence that this route is significantly likely to have higher rights than that of a footpath.

Although your report does state the correct test in Para 33 of your report, Para 18 is misleading to the Countryside and Rights of Way Panel and should be amended.

Para 21 states *"Both the Cary map of 1787 and the Smith's map of 1801 show the physical existence of the route. There is nothing on the maps to indicate the status of the route or the nature of any rights over the route"*

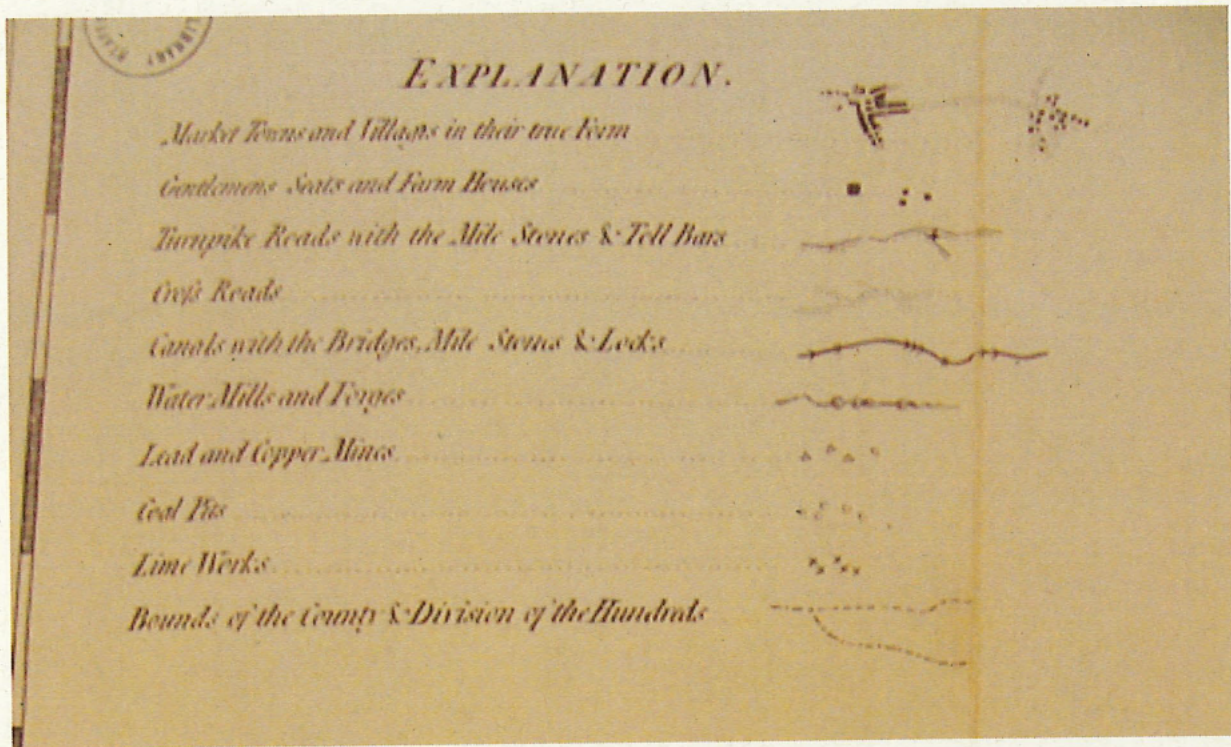
Para 23 states *"The above maps only provide physical evidence of the way, which is not in dispute as it has already been proven that the right exists, but they do not provide any supportive evidence as to any rights over the alleged route"*

SMBG does not agree with this statement. The depiction of a route on early County and area maps must have had some public significance as these were sold to the travelling public.

In *Hollins v Oldham* (1995) Judge Howarth examined various maps from 1777 to 1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive to purchase. There was "no point showing a road to a purchaser if he did not have the right to use it."

The route is also shown on Yates map of Staffordshire dated 1798 which is held in the William Salt Library (Ref. No. 288/2010/folio15). An enlarged extract of this map showing the application route is shown below, together with the map explanation. The route is depicted as "cross roads" The term cross road is used on old maps to describe roads which ran across country and which were neither direct roads, nor turnpike roads. Cross roads were mapped and presented to map purchasers as part of the public highway and byway network and were promoted as being available for travellers on horseback and in horse drawn vehicles. Cross road was the principal term used over two centuries for depicting and defining a second class public carriageway. This is additional evidence that the application route was likely to have had rights consistent with today's restricted byway status, and at the very minimum, bridleway status.





Para 25 states "the Parish Survey Card for Ipstones 35records the path as RP, indicating that it was classified as a Road Used as a Public Path. There is nothing in the text of the description of the route to indicate how the route was being used".

The Parish Record Card for the route is attached. The rear of the card gives the description CRF. The description below is an extract from your colleague [REDACTED] report to the Countryside and Rights of Way Panel in respect of SMBG's application to upgrade Bradnop Footpath 29 to a restricted byway, which gives a concise definition of the term CRF:-

1. Turning to the Parish Survey Card dated 1951, it can be seen that it recorded the route with the acronym CRF. The acronyms CRF and CRB were used historically during the evolution of the Definitive Map and in each case did suggest some kind of vehicular right.
2. The Commons, Open Spaces and Footpaths Preservation Society produced the informative pamphlet entitled "Survey of Rights of Way" which very effectively explained these acronyms. The definition of CRF was stated as "a public carriage or cart road or green unmetalled lane mainly used as a footpath or bridleway". This was further clarified as being "highways which the public are entitled to use with vehicles, but which, in practice, are mainly used by them as footpaths or bridleways."

3. However, the acronyms CRF and CRB could not be used on the Definitive Map and as a result the majority of them were recorded as Roads Used as Public Paths or RUPPs.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

Staffordshire County Council: Survey of Rights of Way

LOCAL AUTHORITY: *Cheadle R.D.*

PARISH: *Upstones*

PATH No., as on map: *35*

PATH SYMBOL, as on map: *C.R.P.*

Note—The survey should be carried out as described in the pamphlet "Survey of Rights of Way."

Path starts at: *Terminus of Bradshaw Lane*

Path finishes at: *Gorsthead Mill*

6" quarter Ordnance Sheet No. 1: *X III. N.E.*

Names and addresses of persons making the survey: *R. Clowes*

Survey started on: *10 Sept 1950*

Survey finished on: *25 May 1952*

Grounds for believing path to be public: please mention Enclosure Award Maps, Tithe Maps, and any other relevant documentary evidence.
Used by public more than 50 yrs without objection

CHV-5227

Description of route:

C.R.P. to Padwick and Gorsthead Mill.

Starts at terminus of Bradshaw Road through field gate and follows cart road to Padwick Farm for about 300 yds bearing right through field gate near Barnfield and continues near Roughstone Hole and down steep rough road known as Shaw Lane, this continues and crossing Coombs Brook near Gorsthead Mill leads on to the main West-Ashbourne Road in Bradnop Parish. This road is letter and now except by the local farmer.

The description of the route on the rear of the Parish Record card is:-

"CRF to Padwick and Gorsthead Mill. Starts at terminus of Bradshaw Road through field gate and follows cart road to Padwick Farm for about 300 yards bearing right through field gate near Barnfield and continues near Roughstone Hole and down steep rough road known as Shaw Lane. this continues and crossing Coombs Brook near Gorsthead Mill leads

to the main Leek-Ashbourne Road in Bradnop Parish. This road is little used now except by local farmers"

The description of CRF on the Parish Record Card is evidence that the public is entitled to use the route with vehicles, although in practice it is used more frequently as a footpath or bridleway. The wording on the card that the road is little used now except by local farmers indicates that farm traffic used the route, and therefore bridle rights (and indeed, restricted byway rights) must exist.

RUPP's

SMBG do not agree with your interpretation of the legislation relating to RUPP's. I attach a copy of an information sheet - RUPP's - the historical context, produced by the British Horse Society which sets out SMBG's position. Case law - Riley (1990) and Kind (2005) has established that the effect of the reclassification of a RUPP to a footpath under special review did not extinguish any higher rights that might have existed over a route.

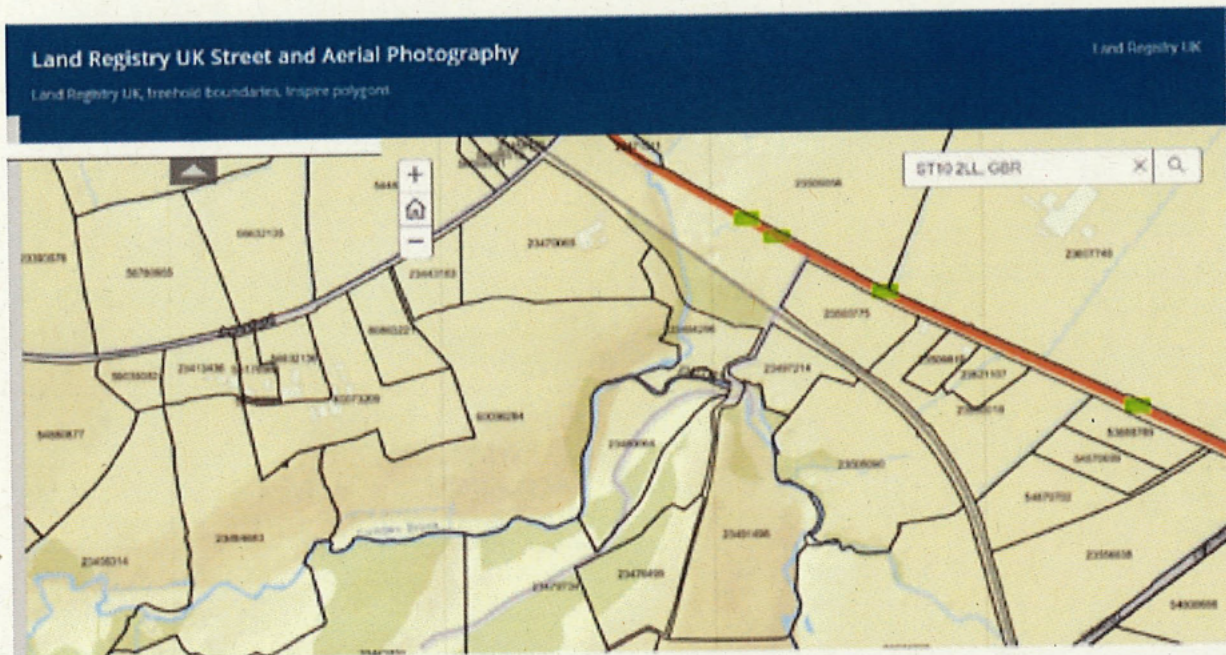
In the appeal decision FPS/D3450/14A/3 relating to Alton FP 13(part) and FP16, the Inspector stated *"the fact that the route was originally believed to have been a higher status than footpath must in my view carry some weight in the determination of its correct current status"*.

ADDITIONAL EVIDENCE IN SUPPORT OF THE APPLICATION

SMBG have carried out additional research on the route of Ipstones FP 35 which should be taken into account:-

- a) Ipstones FP 35 connects at both ends to publicly maintained highways. The southern end of the route joins the D1122 unclassified road Bradshaw Lane. The northern end of the route joins the D1104 unclassified road Gorsthead Mill Lane. It is odd that there are publicly maintainable highways at each end of the route, with a footpath sandwiched between them. This indicates that Ipstones FP 35 is more likely than not to have the same status as the adopted highways it adjoins.
- b) At the northern end of the route the D1104 Gorsthead Mill Lane terminates at the boundary between Ipstones and Bradnop parishes. The attached Land Registry record shows the route of Ipstones FP 35 continuing southward as an unregistered path between registered land. This shows that adjoining landowners do not own the route, and this is evidence that the route has a higher status than that of a footpath, and that it is more likely

than not to be a restricted byway.



In conclusion, having reviewed the evidence submitted by Mr Brian Smith on behalf of SMBG in 2010, and having regard to the additional evidence submitted, SMBG are of the opinion that the route may meet balance of probability test for a restricted byway, and certainly meets the test that it is more likely than not that the route be a bridleway.

In view of this, I would ask that you reconsider your draft recommendation that Ipstones FP 35 remain as a footpath. Can you please confirm that this letter will be placed before the CROW Panel at their meeting to decide this application.

Your sincerely

[Redacted Signature]

Rights of Way Officer
Staffordshire Moorlands Bridleways Group



Protective Marking Scheme Level 3
RESTRICTED

Julie Turner
Via e-mail
[REDACTED]

Ann-Marie Davidson
County Solicitor
Staffordshire Legal Services
Staffordshire County Council
1 Staffordshire Place
Tipping Street
Stafford, ST16 2DH

DX 712320 Stafford 5
Fax No. (01785) 276179
Please ask for: Hannah Titchener
Telephone: 01785 854190
e-mail: hannah.titchener1@staffordshire.gov.uk

My Ref: 002369 DW

Your Ref:

Date: 02 March 2022

Dear Julie,

Re: Wildlife & Countryside Act 1981 - Section 53 Application - Upgrading of Public Footpath 35, Ipstones

We write in response to your letter dated 7th November outlining your comments on the draft report for the above application.

We note your comments that as the route is described as an ancient lane, and the fact that this connects to a Public Horse Carriage and Drift Road, this is evidence that the route is significantly likely to have had the same status and therefore should at least be a public bridleway.

We further note that you state that the depiction of a route on early County and area maps must have had some public significance as these were sold to the travelling public. While your comments have been noted these maps do not show public rights of way and that is not their primary purpose, therefore it remains that at best they show the physical existence of the route.

We note that you have provided an extract from a report from another application. Each application needs to be considered on its own merits. We can only evaluate the evidence that is placed in front of us regarding this specific application.

the knot unites



In relation to the parish survey card, we note your comments that the card states "that the road little used now except by local farmers", and this indicates that farm traffic used the route and therefore bridle rights and restricted byway rights exist. The fact that the route was used by farm traffic does not automatically signify that the route was used by the public as a whole, it may have been that local farmers were given permission to use the route for farm use. This does not show that the public at large had use of the route or had vehicular access to it.

We also note that Ipstones Public Footpath 35 connects at both ends to publicly maintained highways. It is already established that Public Footpath 35 is a public highway, and it is officer's opinion that just because the route connects to two publicly maintained highways this does not automatically mean that the route has rights over it higher than a footpath.

Although, the Land Registry record shows the route of Ipstones FP35 continuing southward as an unregistered path between registered land, we do not agree with your statement that adjoining landowners do not own the route, and therefore this is evidence that the route has higher status than that of a footpath, and that it is more likely than not to be a restricted byway. Although, the route may be unregistered, this is not clear evidence that the route's status is higher than a footpath and therefore on the balance of probabilities should be upgraded to a restricted byway. It is officer's opinion that this evidence is not clear or strong enough to pass the legal test of balance of probabilities and therefore warrant the route being upgraded.

Officers have reviewed the transcript of the Bradnop Inclosure Award 1769. The document sets out who the commissioners were and their purpose for dividing and inclosing land. It sets out their powers and confirms they have the authority to set out and appoint public and private roads. The transcript is from a privately owned copy, but it doesn't say who has written the transcript. Brown Edge Lane is referred to as an ancient lane. The document doesn't appear to include the preamble, although it names the commissioners.

The document appears to set out what areas of land belong to who, and what roads go through the lands. Some routes are specifically referred to as public horse carriage and drift roads, but this is not how Brown Edge Lane is referred as. Other routes are just referred to as public roads. Brown Edge Lane appears to connect to public road 85, which appears to connect from Ashbourne Turnpike Road. There is nothing clear in the transcript to confirm the status of Brown Edge Lane, other than it is an ancient lane. On balance, the transcript of the Inclosure Award doesn't add anything to the case, it doesn't provide clarity regarding the status of the alleged route.

Therefore, we are of the opinion that the route does not meet the balance of probability test for a restricted byway or bridleway status. Therefore, our recommendation remains unchanged.

Your comments will be put before the Countryside Rights of Way Panel when the matter is put before them and determined. If there is anything else, then please do not hesitate to contact us.

Yours sincerely

H.J.Titchener

Hannah Titchener
on behalf of Ann-Marie Davidson, County Solicitor.

HT2 / 002369 DW