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Addendum to Report

Email from: Cllr Paul Northcott

To: Stephanie Clarkson – Legal Officer

Date: 16th May 2023

Dear Stephanie

Thank you.

I wish to support the application please.

Kindest regards

Email from: Landowner 6

To: Stephanie Clarkson - Legal Officer

Date: 23rd May 2023

Dear Stephanie

Thanks for the report it made interesting reading.

My comments

Firstly we have lived here on Common Lane for the last 23 years and I have never seen a horse on the lane that doesn't actually live on Betley Common so there has been no one to 'challenge' on the route except people on foot. I have no idea who the people were that claim to have accessed in the 1990s (now 30 years ago) but they haven't been back since 2000.

As a child I lived on [REDACTED] the Cheshire side and although I rode horses all my life on the lanes here about, until moving to Derbyshire in 1992, I never heard of any Bridle path from Checkley Lane to Betley. I regularly rode from Hough to Betley & Audley to visit friends in this time & was a member of South Cheshire Riding club too so it must have been a very well kept secret.

2. The path along the drain at Yewtree farm is only 5ft wide at best and next to an open ditch, no idea where the 15ft comes from! The land on the Cheshire side from the gate there is regularly flooded and boggy being so bad that it is

not cropped and left to be a wild area. Not sure how the council would upkeep that to a standard safe road surface for horses.

3. I agree with the other residents in that while horses now and then are no big deal if this is upgraded as a byway of any type more than a footpath we will all suffer from a stream of mountain bikes and even trials motorbikes. I speak from experience here as I lived in the peak district for 7 years, they can be extremely unpleasant when challenged!

4. The old paths shown on the tithe maps do not prove that these were used as access by horseback riders to go through from Staffs to Cheshire or vice versa—having done some research myself on Betley common it is obvious to me that these were used by Samuel Harrison and the other tithe/ farming residents in the 1800s to access their fields with working horses to plough the land and collect hay crops.

Hope that helps in some way

Thanks

Regards

Email from: Landowner 5 (from 1990s consultation)

To: Stephanie Clarkson - Legal Officer

Date: 26th May 2023

Hello Stephanie, Thanks for recent correspondence. Am I right in thinking that this is not a new Application but the 1990 one reaching your desk for SCC consideration ?

If this is the application from 1990 then the **Petition listing objections and observations still Stands**.

One other matter that needs mentioning is that traffic in Common Lane has increased by quite a lot, mainly because after 33 years houses tend to have more than 1 car and following and during Covid, and Lockdown, many more deliveries are using the lane. (working from home and buying online)

This of course increases the possibility of accidents if used by horses. Audley Gun Club still use Common Lane as an access to Green Valley Farm 50+ vehicles once per month.

Can I request that the 1990 Application be **scrutinized** in a fair manner and the Application be refused.

Email from: Landowner 7

To: Stephanie Clarkson - Legal Officer

Date: 31st May 2023

Hi Stephanie, in real terms I am not qualified to comment really as I have lived @ Hawthorn Cottage on Common Lane for only 16 years. However during that time I have never seen horses on Common Lane being ridden for pleasure or other . The deeds to the house going back to mid 1800's make several references to Common Lane as a footpath and bridleway is never mentioned. Having read thro the documents 3 times I am of the opinion that the application of 1/8 92 is totally unnecessary and the 13 evidence forms bear a marked similarity in all aspects .

I cannot question what each person says about using Common Lane on horseback but if what they say is true where have they been in the last 16 years?. Certainly the claim that the lane is upto 15ft wide is totally exaggerated as this would apply to only 3 spots on the lane at this time and I cannot say they were there in 92' . It is essentially a single track cul de sac and since the outbreak of covid has become quiet a dangerous drive with the substantial increase in delivery vans travelling at speed every day and horse riding would be out of the question.

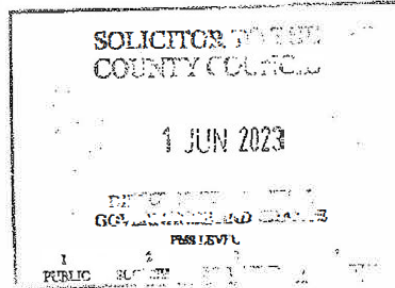
Turning to the land owner objections I agree totally with all that is said and well written by 2,4 & 5. In conclusion, therefore, I join with all the objectors and actually see no reason for the application. At this time and certainly over the last 16 years it is impossible to get to the Cheshire bridleway as the footpath has been diverted from Yew Tree Stables where menage's block the route and it goes though Green Vally yard to a stile . So pretty sue a waste of tome and money putting this to a panel



North Staffordshire Bridleways Association



Affiliated to the British Horse Society



Stephanie Clarkson
Staffordshire Legal Services
Staffordshire County Council
1, Staffordshire Place
Tipping Street
Stafford. ST16 2DH

30 May, 2023

Your Reference. LB 607G

Re: Application for the Upgrading of Public Footpath 20 Betley CP to Bridleway status.

Dear M/s Clarkson,

Thank you for sending me as Research Officer of the North Staffordshire Bridleways Association--- the Report for this Application. It was submitted in 1992 so NSBA has waited for some 30 years (and 3 1/2 years after the Directed date) for it to be Determined. We therefore find it incredible that we should now be told to supply any comments/new evidence within the 2 weeks to June 9.

There are several matters that we shall wish to investigate further, including the extent of the publicly maintainable highway known as Common Lane. Staffordshire County Council has the length of this public road depicted as shown on the first attached map. In contradiction to this, your Planning Department states that this unclassified road extends (minimally) to a point west of Cedar House. See the second map--from a 2014 Planning Application.

I shall present your Report for discussion at the next scheduled Committee Meeting of NSBA on June 8. You will understand that we need to conduct our investigations before we are able to comment further. I shall communicate with you as soon as possible. Should the Application immediately come before the CROW panel monthly meeting before our comments are made, NSBA will of course be ready to Appeal any refusal of the claim.

Yours sincerely,







(1 of 3) Planning Application

Reference: 14/00500/HRN

Address: Land West Of Cedar House, Off Common Lane, Batley, Crewe, Staffordshire CW3 9AL

Description: A 4m section of hedgerow needs to be removed to allow temporary access to the construction easement of a pipeline which is permitted development by virtue of Part 16 Class A (a) of the GPDO. **Staffordshire County Council Planning Dept has confirmed that, due to Common Lane being unclassified, the access into the field benefits from permitted development rights by virtue of Part 2 Class B of the GPDO. The work is in**

Application details



Email from: Representative of British Horse Society

To: Stephanie Clarkson - Legal Officer

Date: 2nd June 2023

Dear Stephanie

Thank you for the notification. Please see attached the following documents in support of the application to upgrade footpath CP20 to Public Bridleway :

- **Tithe Betley, Staffordshire 1846 shows the whole route shaded and bounded by double lines as continuation of the highway**

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The Tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on road, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from the tithe documents regarding the existence of public rights, and, in particular, public vehicular rights. In some cases highways are coloured sienna or light brown which typically indicates public status.

- **Finance Act map IR 132/6/6 shows the majority of the route as 'white road'**

a. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads', and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

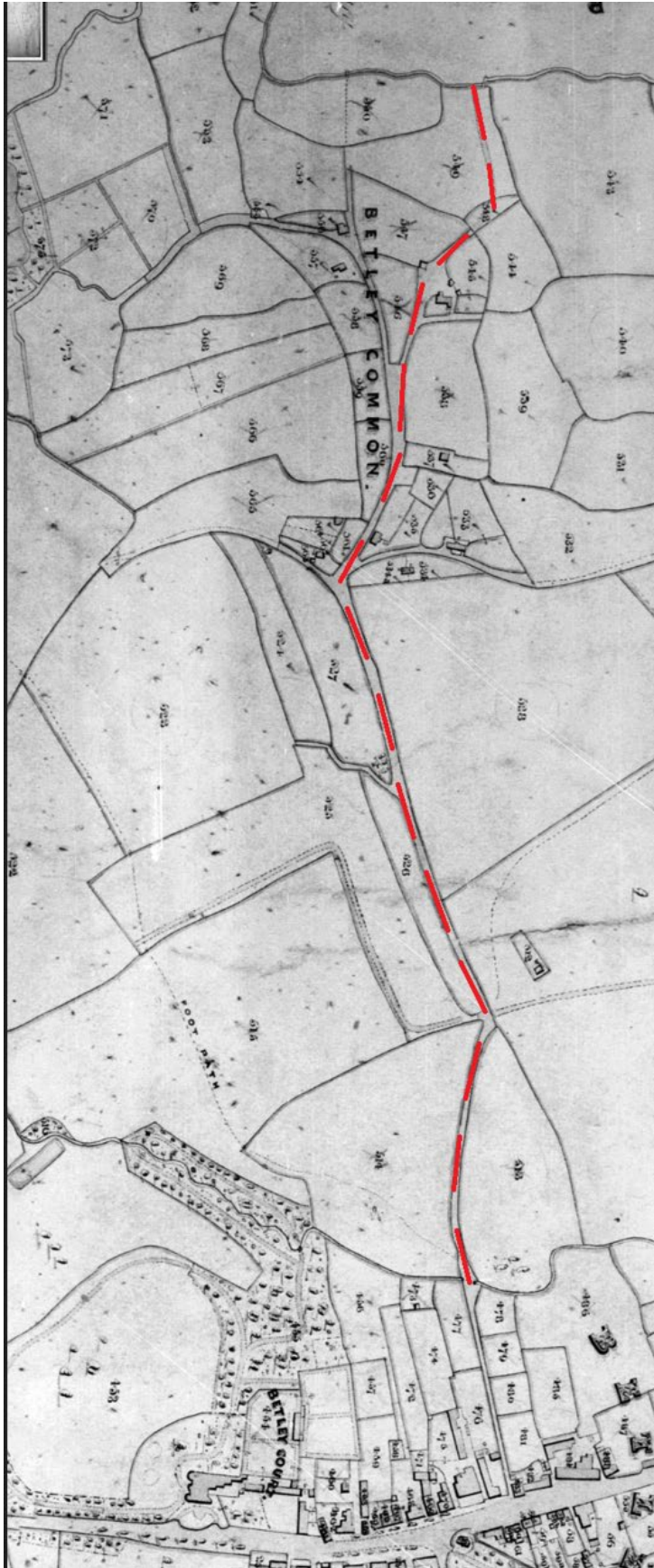
"No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority."

It is noted that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

Kind regards



Tithe Map 1846

Email from: Officer at Cheshire East Borough Council

To: Stephanie Clarkson - Legal Officer

Date: 19th June 2023

Hi Stephanie,

Apologies for not getting back to you sooner.

I have looked at the original walking survey sheet and map (See below), describes Br No5 Chorlton as Bridle Road (Path No.5).

Not sure if that helps but was considered a "Bridle Road" when the walking surveys were conducted.

I could look at the files when I am next in the office, but not sure if that would shed anymore light on why it became a Bridleway.

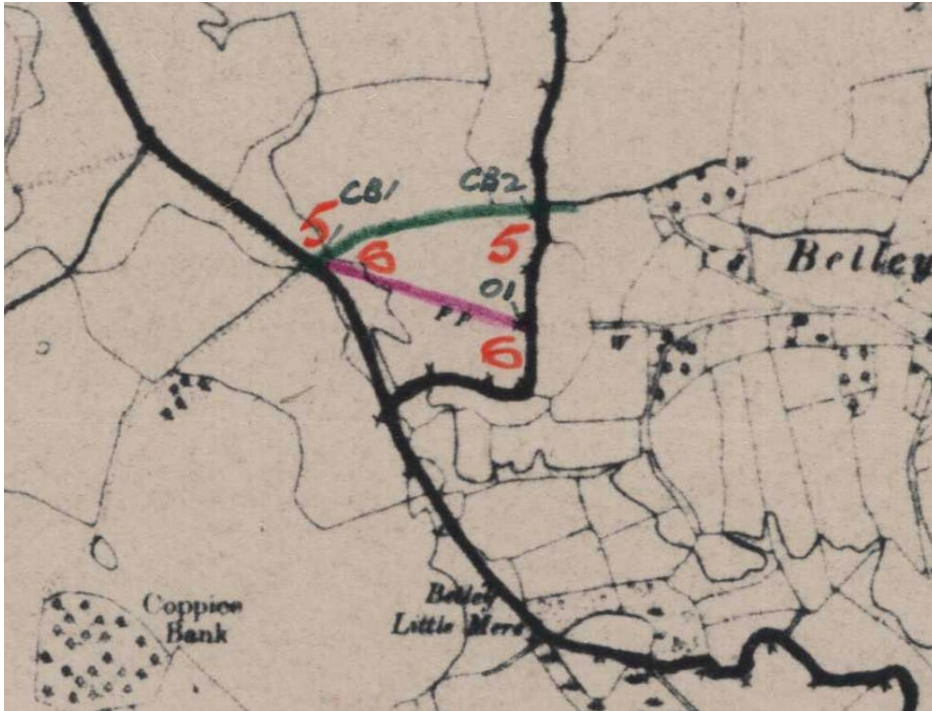
Regards

xxxx

Definitive Map Officer

Cheshire East Borough Council | Public Rights of Way

2nd Floor, Old Building,
Municipal Buildings, Earle Street, Crewe CW1 2BJ



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

PATH No.

PART IV—PUBLIC RIGHTS OF WAY.

COUNTY PALATINE OF CHESTER.

SCHEDULE.

6

DISTRICT: Nantwich R.D. PARISH: Chorlton.

KIND OF PATH: Footpath LENGTH: 200 Yards (approximately)

RELEVANT DATE: _____

PATH COMMENCES AT: Parish and County Boundary and runs in
Westerly direction.

AND TERMINATES AT: Junction with Bridle Road (Path No.5) at
Parish boundary.

GENERAL DESCRIPTION & CONDITION OF STILES, BRIDGES, GATES, NOTICE BOARDS, OBSTRUCTIONS, ETC.

0.1. Stream in 6ft. deep cutting no bridge.

Any further information as to evidence of a Public Right of Way, the condition of the path, the type and condition of stiles, bridges, etc., particulars of any obstructions across the path such as barbed wire, removal of bridges, etc., should appear in the Schedule which will accompany the map.



North Staffordshire Bridleways Association

Affiliated to the British Horse Society

<http://www.north-staffordshire-bridleways-association.org/>



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ST5 5JF

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Staffordshire Legal Services
Staffordshire County Council
1, Staffordshire Place
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ST16 2DH

5 June, 2023

Your Reference. LB 607G

Re: Application for the upgrading of Public Footpath 20 Betley CP to Bridleway status.

Dear M/s Clarkson,

Firstly, the following response to your letter regarding the above Definitive Map Modification Application should not be read as any personal criticism. It is acknowledged that you have been placed in the impossible position of trying to investigate & report on an application that was made more than 30 years ago, that Staffordshire County Council has failed to deal with. North Staffordshire Bridleways Association (made up entirely of volunteers who have circa 8 committee meetings per year) are now being placed in the invidious position of being given only a few weeks to provide comments on a 30 year application because of the Council's maladministration.

Before I am able to substantively comment on the draft report that you provided for this (LB 607G) definitive map modification application, I have a few queries. Please can you kindly provide answers to the following so that I am able to fully respond as requested.

Landowner Representations: There are many references to landowner input and representations in your report. However, as you will see from the first attachment, nearly all of Common Lane, up to the Cheshire East boundary, is **NOT** Land Registered. All the land, property and fields adjoining it **are** Land Registered. This raises the significant questions regarding the ownership and status of the road. Any adjoining property owners to what is now recorded as Betley Footpath 20 would have no legal right of access across it other than by foot, by way of the current recorded public footpath rights unless:

A) An express right of access has been granted at some point in history & can be evidenced by documentation, or (B) A private right by prescription can be proven through long uninterrupted use (minimally 20 years) without secrecy, force or agreement.

There is a legal presumption, in the absence of clear root of title, that roads are owned by the 'frontagers' adjoining the road. But in this case there are many properties that adjoin the road so each would need a legal easement or prescriptive right to pass over their neighbours section of road. It is not possible to register a prescriptive right with Land Registry unless the burdened land (the road) is also Land Registered (which it is not). This is because there would be no title documents to record the burden on or ability to notify a verified affected proprietor of the affected land (the unregistered road).

So, can you kindly confirm what research you undertook to determine ownership of the unregistered land comprising the application route? Also, what verification of access rights was conducted to establish what adjoining landowners legal access rights actually are (other than on foot).

These are important points because the adjoining landowners have expressed strong opposition to the application without providing any evidence of their own legal interest and right of access. So, for the purpose of equality, it is totally reasonable that any asserted landowner interests in the road are fully qualified and explained to Members who will determine the application. Also, there is some doubt about whether the extent of Common Lane maintenance responsibility is correctly recorded on the Councils records in any case. The reasons for this are set out below.

Extent of Common Lane as a Publicly Maintainable Highway.

There is clearly internal confusion at Staffordshire County Council regarding the extent of public maintenance responsibility for Common Lane at Betley. The second attachment shows the current

recorded extent to be up to the western side of the brook that is depicted, including the bridge that crosses over it. The maintainable responsibility for this unclassified road then ceases at that point according to current records. By contrast, input from Staffordshire County Council in 2014, in response to a Planning Consent Application, stated that its extent as an unclassified public road extended minimally to the western side of Cedar House. This is hundreds of yards further west than the current records depict. The evidence of the public maintenance responsibility extending further west than now recorded, asserted by Staffordshire County Council in 2014 is contained in the third attachment taken from the Newcastle Under Lyme Borough Council website. So:

Can you please explain why in 2014 Staffordshire County Council confirmed that this unclassified road extended a great deal further west than the records now depict? And have you verified whether the road records held by the Council have been altered at any time, resulting in any part of the public highway having been 'rubbed off' the records?

I think you will accept that there is absolutely no logical reason or rationale why public responsibility for Common Lane terminates where it is now recorded to be. Taking current and historical maps, see attachment four with the current termination position of public maintenance responsibility shown by a yellow dot, there is no logic whatsoever for the termination of responsibility at that position. Also, comments in the report that the road has not been maintained by Staffordshire County Council are irrelevant and misleading. Maintenance not being conducted has absolutely no bearing on whether a road is publicly maintainable or not. There are many minor unclassified roads recorded on the legal records that have never had any maintenance conducted on them in living memory. Lack of maintenance has no bearing whatsoever on whether a road is publicly maintainable or not.

1910 Finance Act Plan Evidence.

Your comments on the 1910 Finance Act Plan are misleading. You confirm at point 67 that most of the application route is excluded from the adjoining hereditaments surrounding it. The application route is therefore separated from the taxable adjoining land holdings (hereditament numbers) and excluded from incremental duty tax. As the application route is already recorded as a definitive public right of way your commentary rightly states that this removes any ambiguity about whether the depicted route on the 1910 Finance Act plan is public or private. It is a public path. However, you then state that unfortunately there is no copy of the field book to assist in establishing whether its status is a bridleway or a footpath.#

When land is separated from the adjoining hereditaments on a 1910 Finance Act Plan, it is not included in the land valuation. Accordingly, because it has been entirely excluded from the land valuation, there could be not be any deduction in duty value for any public right of way over it. So, there could not be a deduction in value for a public right of way over land that is **not** included within a hereditament valuation. Thus there would be no reason for the field book to comment on it in any way. Allowance for public paths that are included within the mapped hereditament boundaries are usually noted--but not for land excluded from the assessment altogether. So:

Please can you amend the report because it will mislead Members to suggest that the field books could clarify whether the application route is a public bridleway or a public footpath?

I have attached a photograph of the Inland Revenue 1910 Finance Act Plan for the area, held at the National Archives in Kew, because the document appended to your report, provided by the Ramblers when consulted on the claim, is a part copy only showing the excluded road boundaries inked onto an Ordnance Survey base map of the period. This attachment, reference IR 132 6 6, shows the adjoining hereditament numbers and boundaries evidencing exclusion of any hereditament number being applied to the road. This is in contrast to adjoining hereditaments that have the inland revenue hereditament numbers and boundaries clearly entered in red. You will need to enlarge the image to read them. This is strong evidence of the route being more than just a public footpath.

Abhorrent Delays Disadvantaging North Staffordshire Bridleways Association.

The application for this Modification Order was submitted on 1st August, 1992 which is now more than 30 years ago. In the absence of Staffordshire County Council complying with its duty to determine it, the Secretary of State directed the Council to do so by no later than 30 October, 2019. The Council acted in contempt of that direction resulting in it now questioning user evidence that goes back more than 50 years to the commencement date of the required evidence period [between August 1972 & August 1992]. You will appreciate that given the abhorrent delay, added to the contempt for the directed deadline served by the Secretary of State to determine the claim by more than 3 1/2 years ago, most of the evidence providers are now sadly deceased, moved from the area or otherwise uncontactable. Further, at this distance in time it is impossible to now solicit additional user evidence to compliment what was provided more than 30 years ago. This has -placed North Staffordshire Bridleways Association in the impossible position of being asked to comment on evidence and/or provide supplementary user evidence which is simply not possible now. This is a totally unreasonable and unacceptable position to find ourselves in.

Your draft report refers to the Council committing to interview the evidence providers around the time that this application was submitted--but it failed to do so. You then go on to say that the Council no longer interviews evidence providers for definitive map modification applications. This is contrary to the Council's representations made to the Secretary of State in response to consultation on earlier Schedule 14 applications for direction. The Council vehemently argued that no date for determination should be

directed because of the complex nature of claims and often having to interview a substantial number of evidence providers. This is a stance that the Council then aborted when the Secretary of State disregarded its representations. So:

Can you please confirm on what date Staffordshire County Council formally decided and agreed that it would no longer interview evidence providers for definitive map modification applications?

Continuity of Application Route into East Cheshire Authority Area.

You have correctly reported that the continuation of the through application route into East Cheshire is recorded as a definitive public Bridleway. This, in itself, lends good support to the whole length of the path being a public bridleway. Because the section in East Cheshire crosses a main line railway shortly after exiting the Staffordshire Authority area there are two implications:

(A) It is likely that the railway plans and book of reference could shed light on the status of the route--because a bridge had to be constructed to accommodate passage over the line. (B) This section of the line is impacted by Hs2 and the definitive bridleway route recorded in East Cheshire is shown as a 'dead end' route for equestrians at the nearby Staffordshire border. This could result in Hs2 arguing that it does not need to provide an equestrian route over what is recorded as a dead end bridleway.

Is this a matter that Staffordshire County Council has considered, factored or investigated further?

Once I have your response to the above and following the next North Staffordshire Bridleways Association Committee meeting on 8 June when this matter will be discussed further, I will provide you with any final input as requested.

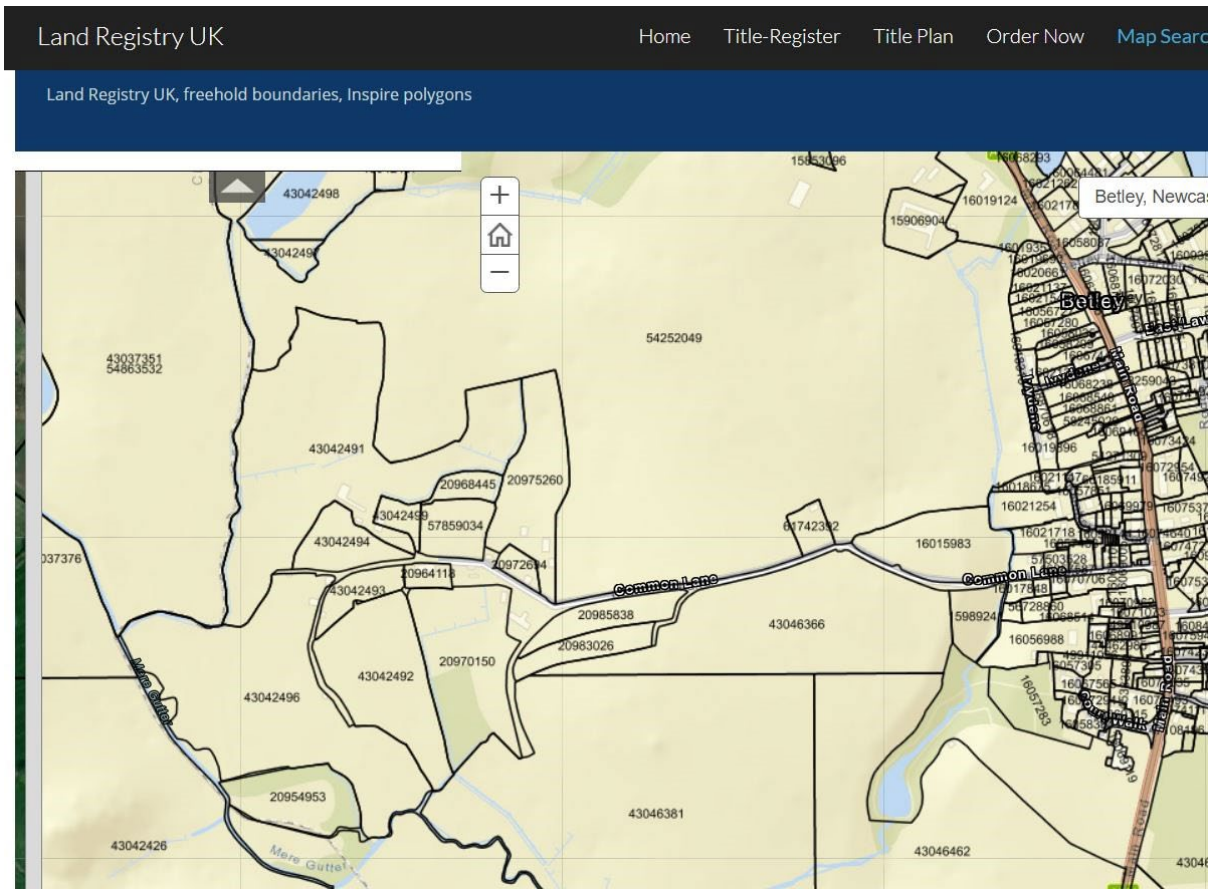
Yours sincerely,



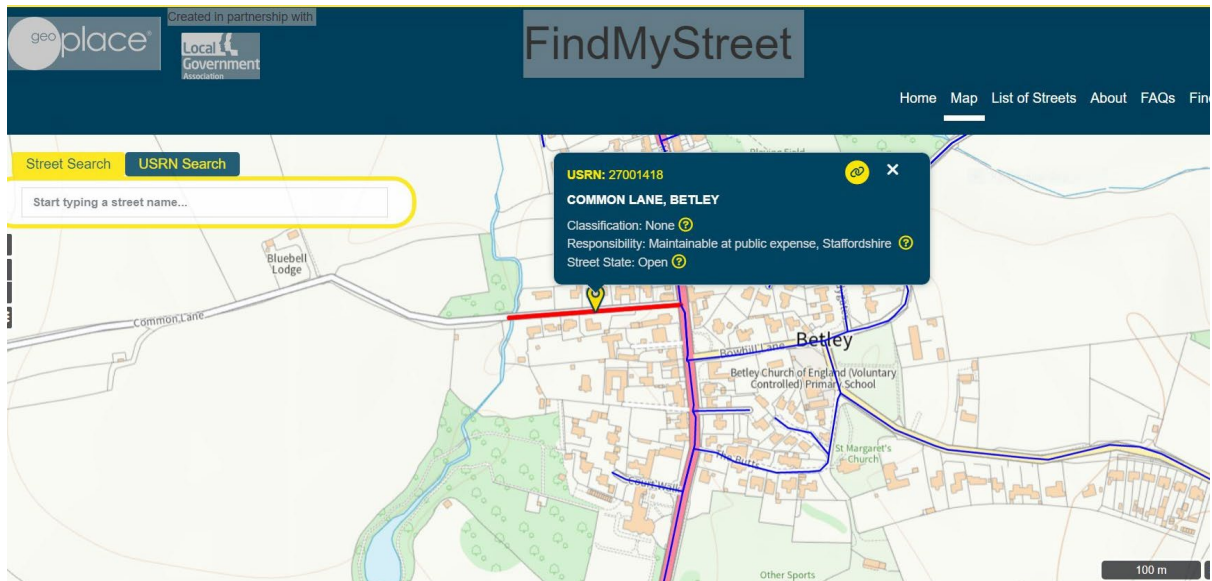
P.P.

Jane Ridley
Research Officer
North Staffordshire Bridleways Association

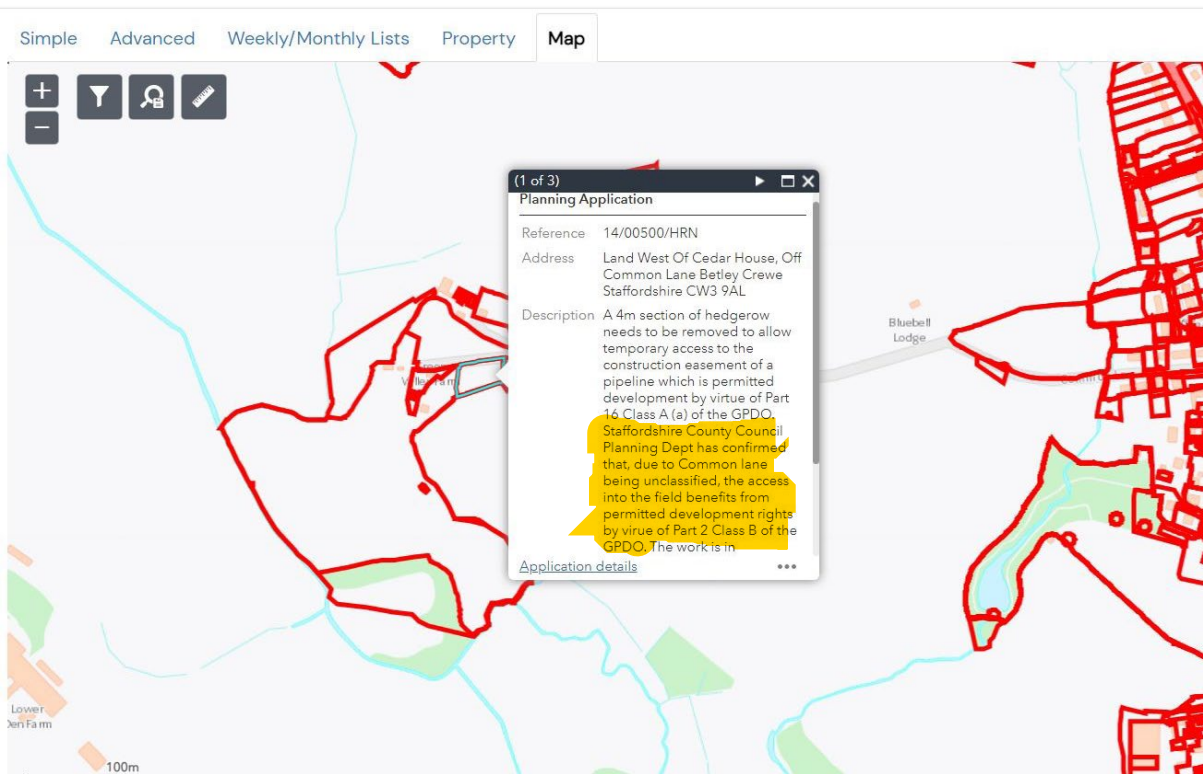
(2) Common Lane Betley is not Land Registered



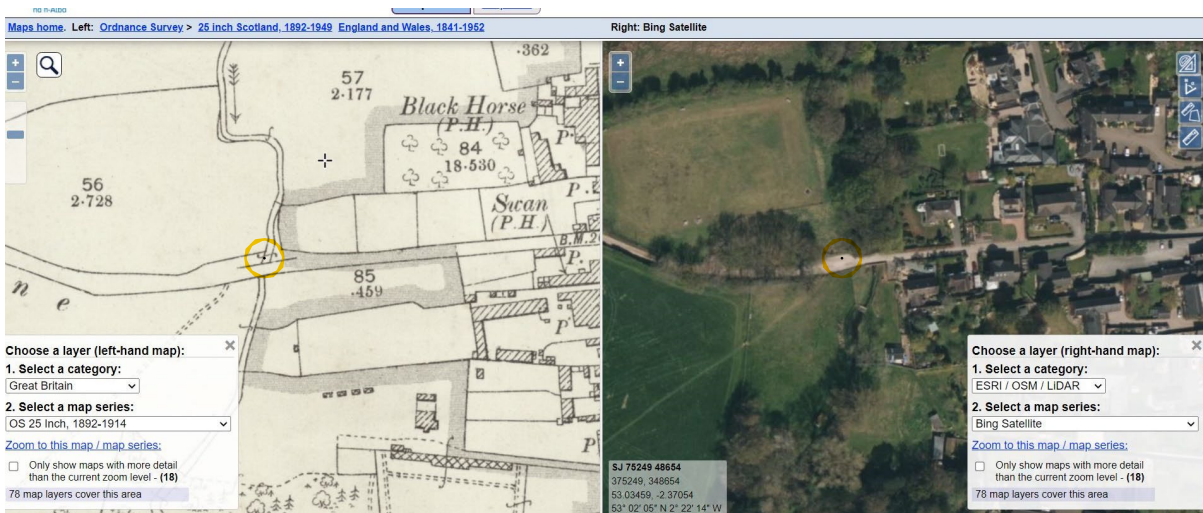
(3) Common Lane Betley – Recorded HMPE



(4) Planning Applications Common Lane Betley



(5) Common Lane – Yellow Dot where HMPE Ends



(6) IR 132 6 6



Letter from: Stephanie Clarkson – Legal Officer

To: North Staffordshire Bridleway Association

Date: 23rd August 2023

Dear XXXX,

Re: App. Upgrading of Public Footpath 20 Betley Parish to Bridleway Status - Wildlife and Countryside Act

I respond to your letter dated 5th June 2023.

Your letter has raised various queries with regard to the report and therefore I will respond in the order in which they have been presented. With regard to the first query concerning ownership of the registered land, the County is not aware of any evidence of ownership of the lane and as you rightly point out the majority of the lane remains unregistered.

It is for the applicant to identify the Landowner and serve notice. When the application was submitted, the applicant stated that the lane was in the ownership of Yew Tree Farm at Common Lane although no further addresses were provided. This was followed up by the applicant advising that she could not identify all of the landowners living along the lane although Betley Parish Council subsequently provided Staffordshire County Council with a list of these landowners.

Neither Yew Tree Farm or the lane were registered at the time of the application. We have since checked the Land Registry website and Yew Tree Farm is now registered and part of the lane around the farm is now registered, although the majority of the lane remains unregistered. We have no further evidence as to land ownership of the lane and consequently the County Council has informally consulted all of the adjoining landowners along the lane. As you will be aware there is a legal rule called the ad medium filae rule. This means that in the absence of any other evidence of ownership, a highway is presumed to be owned by the adjoining landowners up to the midway point in front of their property.

If you have any proof as to who owns the lane, please provide the evidence.

With regard to the access rights, the County would only be interested in Private rights in as much as they may affect any evidence given for a

public right. The County would not accept evidence of a public right from any resident who uses the lane to access their property as such rights would be considered to be private rights. Whether or not these properties have a private right over each other's section of the lane is of no concern to the County in determining whether or not a public right exists.

You query the extent of the publicly maintainable highway status along the length of the lane. The whole of Common Lane is recorded as a public footpath no 20 on the Definitive map and has been since the 1950s. Consequently, it is a publicly maintainable highway for its whole length but only maintainable to the status of a public footpath. The fact that it's shown on the 36 list of streets does not mean that it has any higher rights than a public footpath. It is merely a record of what is maintainable at the public expense.

Our highways team has advised that Common Lane from the junction with Main Road for approximately 168m to the point that it joins Footpath Betley 8 and Betley 20 is recorded as HMPE.

You refer to a screenshot of a planning application from Newcastle under Lyme Planning Authority (not the Highway Authority) in which it stated that land to the West of Cedar House was unclassified. It is not clear where this information was obtained from, but it does not appear to have been taken from the County's highway records. Additionally, as already mentioned, an unclassified road has no legal meaning in terms of defining what rights exist over them and many unclassified roads only have footpath or bridleway rights.

My understanding of your letter is that you have requested that the report be amended, due to the lane being separated from the adjoining hereditaments along the route shown on the Finance Act plan, suggesting that the lane can only have been a vehicular highway with public rights. The Wildlife and Countryside Act 1981 Definitive Map Orders: consistency guidelines state *"So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books: however there may be other reasons to explain its exclusion"*

The guidelines however give as an example *"that there are some cases of a private road being set out in an Inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach. Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of "roadways" from plans but do not explicitly spell out all the circumstances in which such an exclusion would apply."*

Common lane at present is a dead end which only leads to farms. This therefore may suggest that at the time of the Finance Act, considering the lane was used only for a limited number of people (i.e. the farmers), the route was shown to be exuded from the numbered hereditaments.

Alternatively, Common Lane could feasibly have been a private road to the Common and so again would be private and only open to those who had Rights of Common.

I do not however consider that my current stance misleads the Members and therefore I do not intend to make any changes to it. Your letter and this response will be attached as an addendum to the report and therefore Members will be able to view your comments and line of reasoning.

You comment that the Bridleways Association was disadvantaged by the fact that the Council did not interview the users. I would advise that the user evidence is poor whether or not we had interviewed the witnesses. There was only one person who claimed to have used the route for 20 years, and the majority of witnesses claimed to have used the route for less than 10 years. Consequently, the evidence was insufficient to pass the Statutory test, and interviews would not have changed that position.

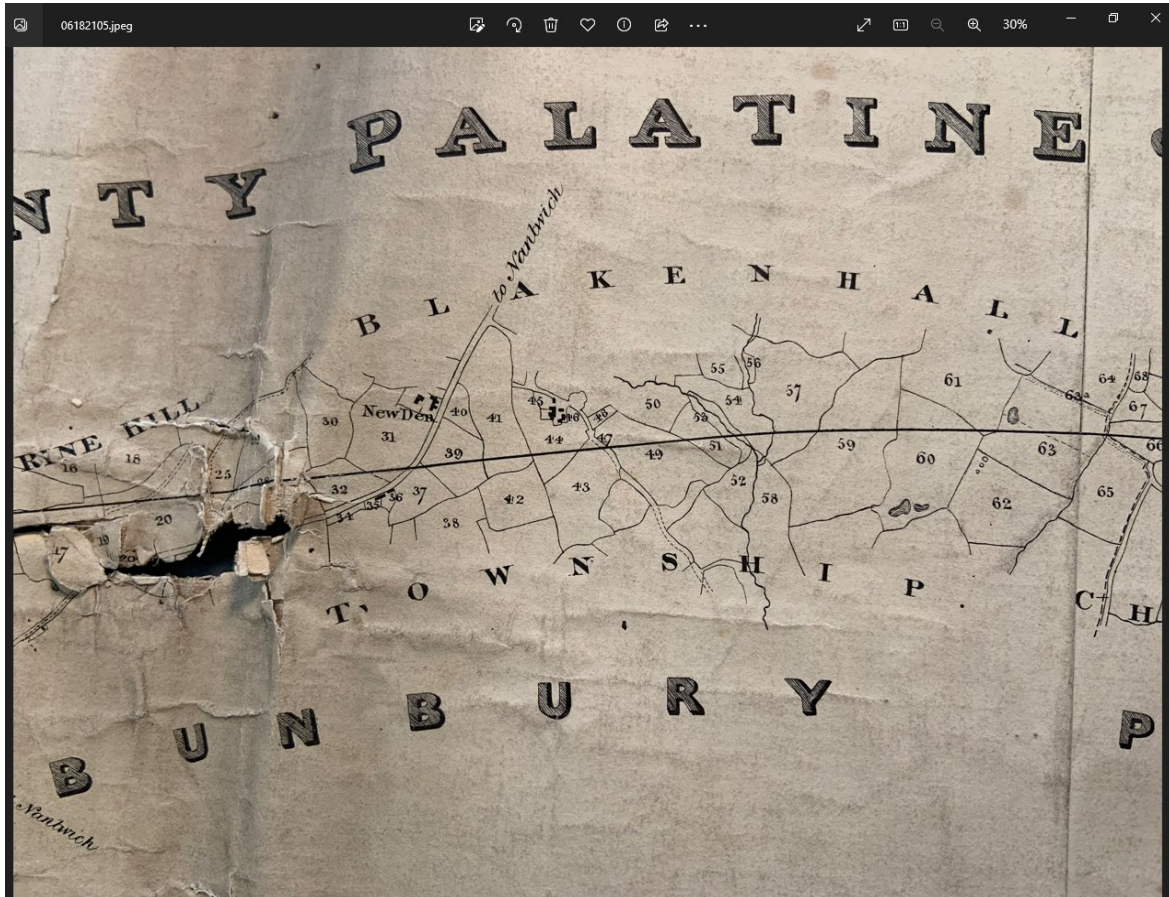
In relation to your concerns regarding the railway plans and book of reference, I have subsequently considered the railway plans and book of reference and which I attach. The only route crossing the railway within the vicinity is the one passing New Den on the railway plan which appears to be the current Den Lane. There is a route on the plan in the vicinity of Common Lane which is numbered 47. The book of reference shows entry 47 in the township of Blakenhall in the Parish of Wybunbury to be an "Occupation Road". Consequently, there is no indication on the deposited railway evidence that the route was public at that time. In fact, this supports the contention that the route was only open to the occupiers and those with rights of common and not to the public.

I note your concerns regarding the fact that Cheshire County Council has recorded the route to the County Boundary as a bridleway and the potential repercussions regarding the HS2 project concerning the bridleway. I cannot however find any further evidence to suggest that this current footpath has any higher rights and therefore at present, I have no reason to change the current recommendation within the draft report.

The intention is that the report will now go to the Panel meeting on 13th October. Consequently, I would ask that if you wish to submit any further evidence, you do so by 29th September 2023.

Yours sincerely,

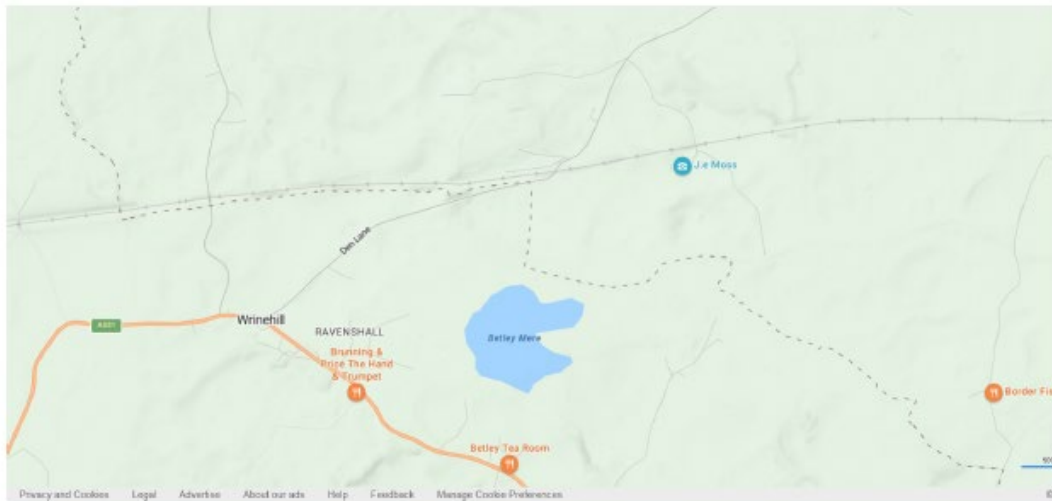
Railway Plan C



Grand Junction Railway Book of Reference

	17	do	Broughton court		
	18	Highway from Wyburning	Surveyors of Highways		
Richard Tommis	19	St John's Hill	Rev Henry Debes Broughton	John Tommis	John Tommis
	20	Pasture			
Township of Blaken hall in the Parish of Wyburning					
	20a	Pasture	Rev Henry Debes Broughton	John Tommis	Thomas Lowndes
	25	Orable	do John Debes Broughton		
	26	do			
	27	do			
	28	Meadow			Henshall Moss & John Moss
	29	do			
	30	do			
	31	Pasture			
	32	do			
	33	Highway from Wyburning	Surveyors of Highways		
	34	St John's Hill	do John Debes Broughton	Theodore Brookes William Brooks	James Beede Joseph Brooks James Beak
	35	Pasture			
	35	House & Garden			
	36	do			
	37	Pasture			
	38	Orable			Henshall Moss & John Moss
	39	do			
Thorp	40	Pasture			
	41	do			
Henshall	42	Orable			
Broad	43	Pasture			
	44	Meadow			
	45	House & Garden			
	46	Buildings & Yard			George Soadall
	47	Occupation Road			
	48	Orable			
	49	do			
	50	Pasture			
	51	do			
	52	Meadow			
	53	Plantation			
	54	Pasture			do John Debes Broughton George Soadall

Contemporary plans of railway line at Betley



Email enclosing letter from: Representative of Staffordshire Moorlands
Bridleway Group

To: Stephanie Clarkson - Legal Officer

Date: 4th September 2023



North Staffordshire Bridleways Association

Affiliated to the British Horse Society



<https://northstaffsbridleways.wordpress.com/>

Ms Stephanie Clarkson
Legal Officer, Highways and Rights of Way
Staffordshire County Council
2 Staffordshire Place
Tipping Street
Stafford
ST16 2DH

4 September 2023

Dear Ms Clarkson

Your reference: LB607G

Thank you for your below email, with an attached letter in Word format, responding to our comments on your draft report for the Common Lane Betley bridleway application.

We do not agree with many of the comments you have made. We have, therefore, highlighted these in yellow on the attached version of your Word document and provided our corresponding comments in red with referenced attachments. Please ensure that a copy of this email, with all the attachments, is provided to the Panel Members who will determine this application.

You will appreciate that in this case we feel strongly that the evidence supports an Order for a bridleway to be made. If this is refused you will also understand why we will be appealing any such decision to the Secretary of State.

Yours sincerely

Jane Ridley

For and on behalf of
North Staffordshire Bridleways Association

Encs.

Protective Marking Scheme Level 3

Jane Ridley
North Staffordshire Bridleways
Association
Stables Cottage
Hill Chorlton
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DX 712320 Stafford 5
Service: legal.services@staffordshire.gov.uk
Please ask for: Stephanie Clarkson
Telephone: 01785 276292
e-mail:
stephanie.clarkson@staffordshire.gov.uk

My Ref: LB607G

Your Ref:

Date: 23 August, 2023

Dear Jane,

Re: App. Upgrading of Public Footpath 20 Betley Parish to Bridleway Status - Wildlife and Countryside Act

I respond to your letter dated 5th June 2023.

Your letter has raised various queries with regard to the report and therefore I will respond in the order in which they have been presented. With regard to the first query concerning ownership of the registered land, the County is not aware of any evidence of ownership of the lane and as you rightly point out the majority of the lane remains unregistered.

It is for the applicant to identify the Landowner and serve notice. When the application was submitted, the applicant stated that the lane was in the ownership of Yew Tree Farm at Common Lane although no further addresses were provided. This was followed up by the applicant advising that she could not identify all of the landowners living along the lane although Betley Parish Council subsequently provided Staffordshire County Council with a list of these landowners.

Neither Yew Tree Farm or the lane were registered at the time of the application. We have since checked the Land Registry website and Yew Tree Farm is now registered and part of the lane around the farm is now registered, although the majority of the lane remains unregistered. **We have no further evidence as to land ownership of the lane and consequently the County Council has informally consulted all of the adjoining landowners along the lane. But, without any verification that they are legal proprietors of the land concerned. As you will be aware**

there is a legal rule called the ad medium filae rule. We are familiar with this but assume you are referring to the ad medium **filum** rule but have misspelt the expression. This means that in the absence of any other ownership, a highway is presumed to be owned by the adjoining landowners up to the midway point in front of their property. If you have any proof as to who owns the lane, please provide the evidence. As you well know, no proof of ownership has been found anywhere despite extensive searches.

With regard to the access rights, the County would only be interested in Private rights in as much as they may affect any evidence given for a public right. The County would not accept evidence of a public right from any resident who uses the lane to access their property as such rights would be considered to be private rights. Whether or not these properties have a private right over each other's section of the lane is of no concern to the County in determining whether or not a public right exists. The Council should be concerned, because it is a criminal offense under section 34 of the Road Traffic Act to drive a mechanically propelled vehicle, without lawful authority, over a route that is recorded as definitive public footpath.

You query the extent of the publicly maintainable highway status along the length of the lane. The whole of Common Lane is recorded as a public footpath no 20 on the Definitive map and has been since the 1950s. Consequently, it is a publicly maintainable highway for its whole length but only maintainable to the status of a public footpath. The fact that it's shown on the 36 list of streets does not mean that it has any higher rights than a public footpath. It is merely a record of what is maintainable at the public expense.

Our highways team has advised that Common Lane from the junction with Main Road for approximately 168m to the point that it joins Footpath Betley 8 and Betley 20 is recorded as HMPE.

You refer to a screenshot of a planning application from Newcastle under Lyme Planning Authority (not the Highway Authority) in which it stated that land to the West of Cedar House was unclassified. It is not clear where this information was obtained from, but it does not appear to have been taken from the County's highway records. Additionally, as already mentioned, an unclassified road has no legal meaning in terms of defining what rights exist over them and many unclassified roads only have footpath or bridleway rights.

My understanding of your letter is that you have requested that the report be amended, due to the lane being separated from the adjoining hereditaments along the route shown on the Finance Act plan, suggesting that the lane can only have been a vehicular highway with public rights. The Wildlife and Countryside Act 1981 Definitive Map Orders: consistency guidelines state "So if a route in dispute is external to any numbered

hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books: however, there may be other reasons to explain its exclusion" We totally agree that the 1910 Finance Act Plan (and the Tithe Map of 1842) provide good evidence that the application route is more than just a public footpath (as stated in sections 76 to 79 of your draft report).

The guidelines however give as an example "that there are some cases of a private road being set out in an Inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however, this has not been a consistent approach. Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of "roadways" from plans but do not explicitly spell out all the circumstances in which such an exclusion would apply."

Common lane at present is a dead end which only leads to farms. This therefore may suggest that at the time of the Finance Act, considering the lane was used only for a limited number of people (i.e. the farmers), the route was shown to be exuded from the numbered hereditaments. The statement that Common Lane is a "dead end" route is totally incorrect and misleading, because Common Lane/Betley FP 20 is not a dead end path at all. It is a cross border contiguous and continuous highway, recorded as a public bridleway on entering the East Cheshire authority area and provides an uninterrupted through route connected to public maintainable roads at each end. Please see the OS rights of way map we have attached, with Betley FP 20 highlighted by yellow dots to the point where it meets the county boundary. Its continuation is then recorded as a public bridleway. Also attached is an 1831 OS map showing it as a through route before the Grand Junction Railway Act of 1833 and the opening of the railway in 1837. The fact that the whole of the route is recorded as definitive public highway clarifies that that it is public and not "private". Albeit some private rights may also exist over it as well. So, the only issue in contention is the public user status. Based on the historical evidence alone it is more likely than not (at least 51% on the balance of probability) that the route has higher public user rights than just a footpath. This is reinforced by the status of the route being recorded as a public bridleway in East Cheshire, which abruptly terminates as a "dead end" route for equestrian users at the Staffordshire boundary. This being without any feature or justification as to why. It is a well-accepted legal principle that public paths exist to provide through passage for users. Without any valid reason identified for the abrupt termination of these equestrian rights, it is clear that there is a mistake in the current recording of the route status that needs to be corrected.

Alternatively, Common Lane could feasibly have been a private road to the Common and so again would be private and only open to those who had Rights of Common. There is absolutely no evidence whatsoever, other than speculation you introduce based on the place name of "Betley Common", that the land concerned has ever benefited from commoner's rights. This is because an Enclosure (or Inclosure) Award for any land in the former Manor of Betley has never been located or found. An Award would have been legally required for Commissioners to authorise enclosure of any common land and extinguish any commoners' rights over it. Without evidence of such an Award it is totally wrong and misleading of you to refer to "those who had Rights of Common" – unless you actually have evidence that commoners rights existed.

I do not however consider that my current stance misleads the Members and therefore I do not intend to make any changes to it. Your letter and this response will be attached as an addendum to the report and therefore Members will be able to view your comments and line of reasoning.

You comment that the Bridleways Association was disadvantaged by the fact that the Council did not interview the users. I would advise that the user evidence is poor whether or not we had interviewed the witnesses. There was only one person who claimed to have used the route for 20 years, and the majority of witnesses claimed to have used the route for less than 10 years. Consequently, the evidence was insufficient to pass the Statutory test, and interviews would not have changed that position. As clearly stated in your report, in 1992 Officers confirmed that they would be interviewing the evidence providers to elaborate on the user evidence - but they patently failed to do so. Now, 31 years later, you are casually trying to assert that this omission and failure by the Council would not have changed the position. We cannot agree with that at all.

In relation to your concerns regarding the railway plans and book of reference, I have subsequently considered the railway plans and book of reference and which I attach. Yes, but you have not placed the railway plan or the ROW plan in an orientation to North - and both plans are in dissimilar orientation to one another. As this makes them very difficult to compare we have replaced them, as attached, after rotating both of them to North making them much easier to understand by Members of the Panel who will determine this 30 plus year old application. The only route crossing the railway within the vicinity is the one passing New Den on the railway plan which appears to be the current Den Lane. There is a route on the plan in the vicinity of Common Lane which is numbered 47. The book of reference shows entry 47 in the township of Blakenhall in the Parish of Wybunbury to be an "Occupation Road". Consequently, there is no indication on the deposited railway evidence that the route was public at that time. In fact, this supports the contention that the route was only

open to the occupiers and those with rights of common and not to the public. Again, this statement is misleading. Firstly, as stated previously, no evidence of commoners' rights has been found to exist over any of the land adjoining Common Lane. Further, as the Book of Reference entry for the route noted as 47 is not listed with an owner to notify, despite a substantial "all purpose" bridge having to be built to accommodate its passage over the railway line, this is indicative of higher rights than a footpath and public user status.

I note your concerns regarding the fact that Cheshire County Council has recorded the route to the County Boundary as a bridleway and the potential repercussions regarding the HS2 project concerning the bridleway. I cannot however find any further evidence to suggest that this current footpath has any higher rights and therefore at present, I have no reason to change the current recommendation within the draft report.

The intention is that the report will now go to the Panel meeting on 13th October. Consequently, I would ask that if you wish to submit any further evidence, you do so by 29th September 2023.

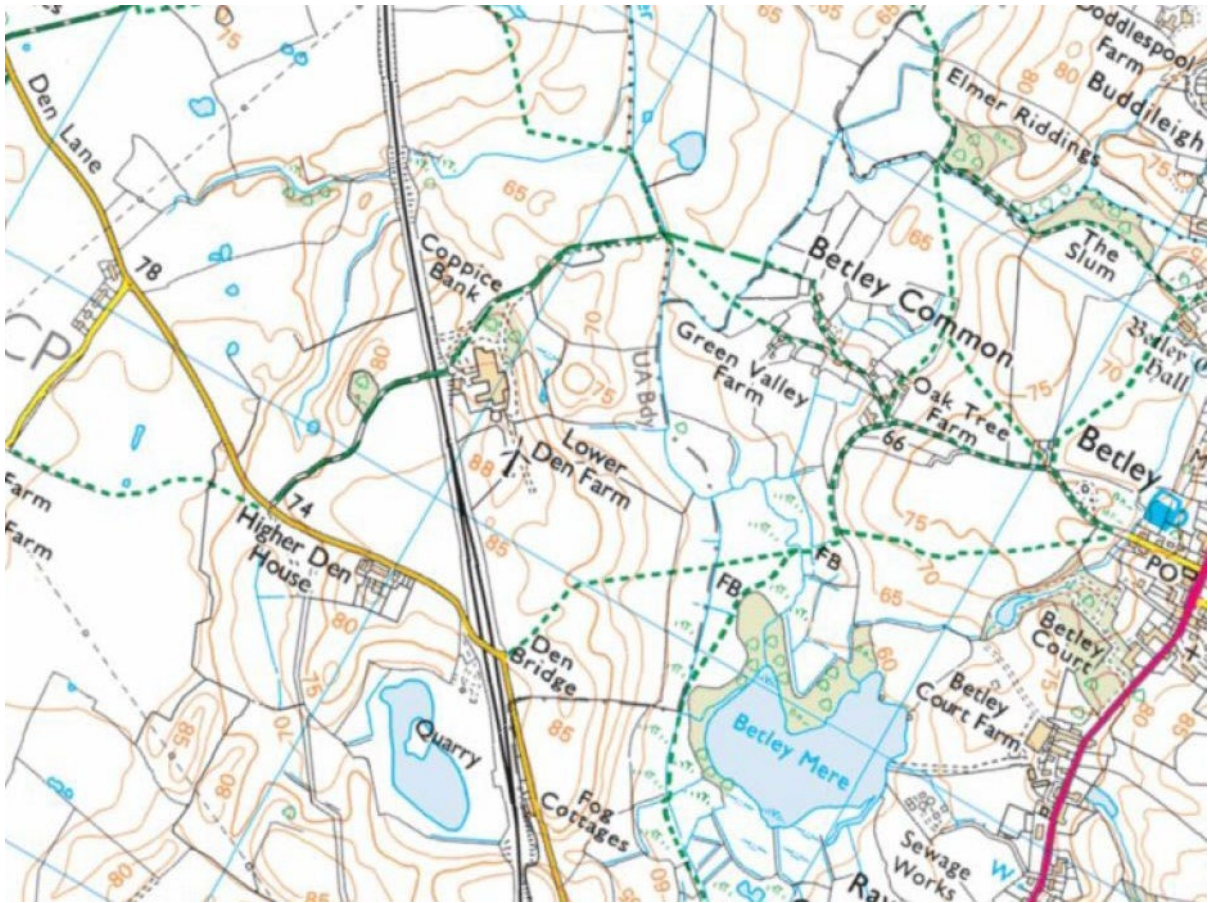
Yours sincerely,

Stephanie Clarkson

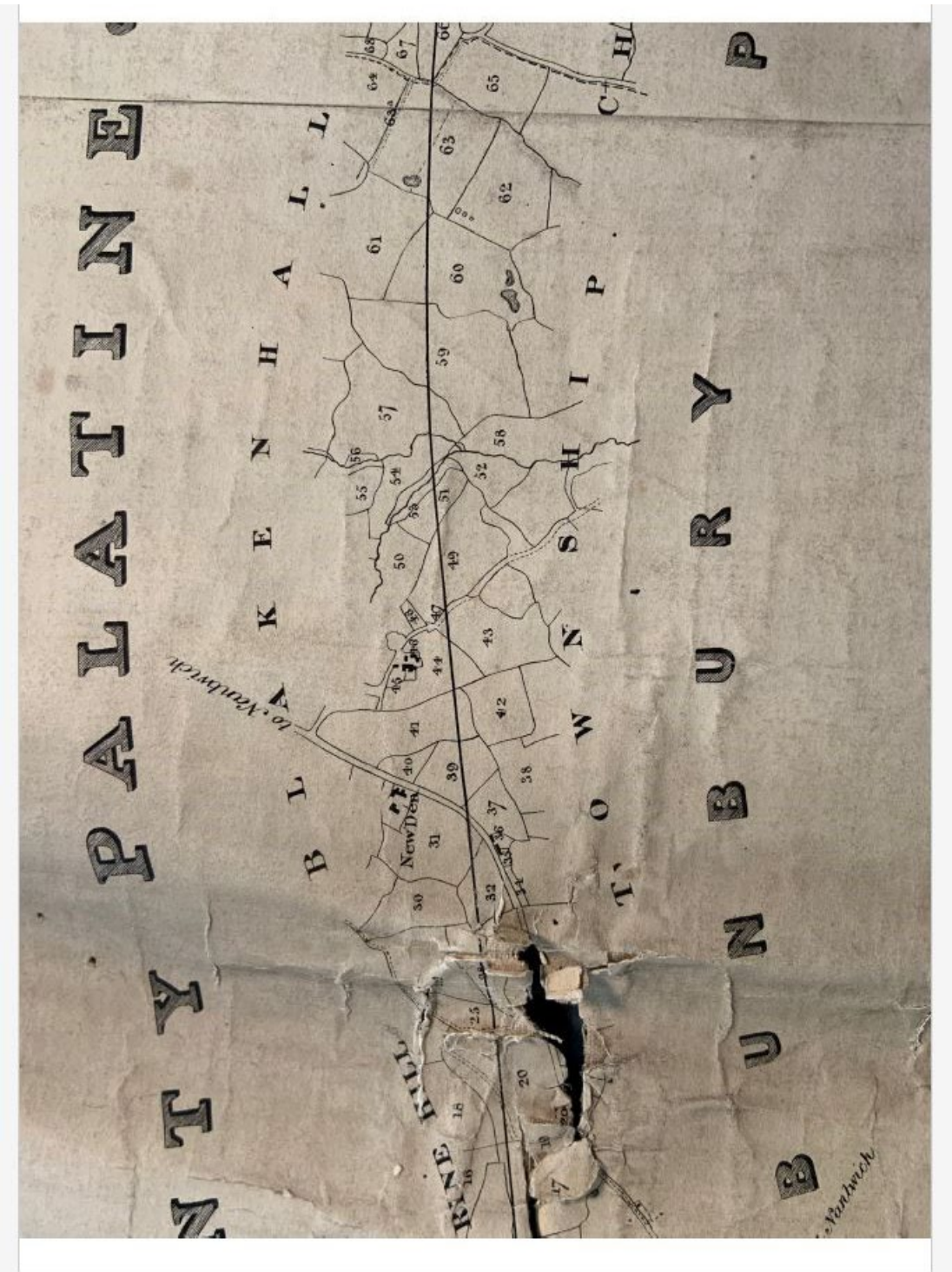
Stephanie Clarkson
on behalf of Kate Loader, County Solicitor.

SC5 / LB607G

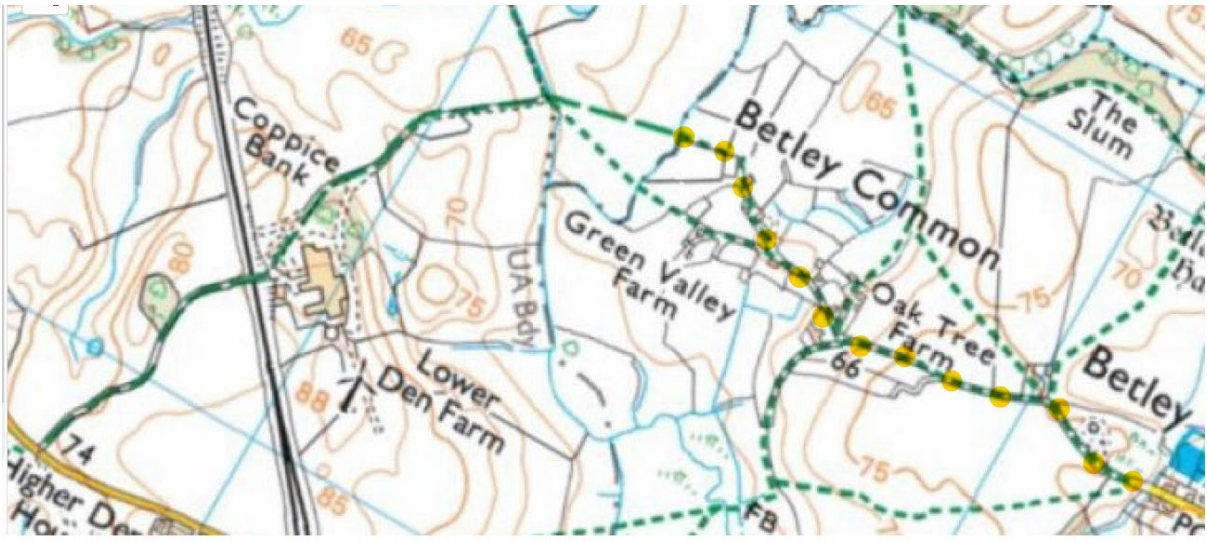
Betley Area ROWs



Railway Plan C(Q RUM 77 PT1) (for addendum)



Common Lane is Not a Dead End Path as stated



Betley OS 1831 2 Inches to mile



Further to Ms Ridley's comments in my response letter of 23rd August, I will touch upon the points in the order in which they are raised.

In the fourth paragraph the Council has endeavoured to contact those concerned by the application. There is no statutory requirement for the Council to consult anyone except the Local Authority prior to making an Order. It is in DEFRA's guidance for Local Authorities that the Council has contacted those with interests including landowners, users and proscribed organisations to forestall representations and objections prior to making an Order. The Council considers that by writing to every known registered landowner/occupier along the lane it has discharged its responsibilities under these guidelines. In due course, if the Panel or the Planning Inspectorate consider there is sufficient evidence for the route, then an Order will be made, and notices will be inserted at the start and end of the path in a further attempt to locate any owner concerned.

With regard to the comments in the fifth paragraph I note that the representative has directed the Council to the Road Traffic Act 1988 s34 paragraph 1(1). The Council, whilst aware of this legislation considers that the Natural Environment and Rural Communities Act 2006 s67 paragraph 5 provides that where any existing public right of way was reasonably necessary to enable a person with an interest in land to obtain access to the land, then no offence is committed.

The ninth paragraph concurs with the Council.

The tenth and eleventh paragraph have been commented upon by the applicant. Officers have taken a decision on whether they consider there is sufficient evidence for an upgrade and officer opinion is that there is not. Officers believe that the historical evidence is not sufficient to upgrade the route based on the balance of probability test.

The details in Paragraph 14 have been covered in previous responses.

Regarding paragraph fifteen, officers appreciate that the contemporary plans produced could appear awkward, but the intention was to keep the same orientation as the original Railway Plan so that they could be more easily compared.

With reference to the rights of common these are covered in paragraph twelve. As for the book of "all purpose" bridge it is not clear as to the location of the bridge or in which document this was found on so officers cannot comment further.