

Local Members' Interest	
Cllr Worthington	Staffordshire Moorlands- Churnet Valley

Countryside and Rights of Way Panel -

Wildlife and Countryside Act 1981

Application to upgrade Public Footpath 56 Cotton to a Public Bridleway, in the parish of Cotton

Report of the Director for Corporate Services

Recommendation

1. That the evidence submitted by the applicant and that discovered by the County Council is insufficient to show that, on a balance of probabilities, public bridle rights exist along the line of Public Footpath 56 Cotton Parish.
2. That Public Footpath No 56 Cotton Parish which is subject to the claim remains as a footpath as currently shown on the Definitive Map and Statement of Public Rights of Way for the District of Staffordshire Moorlands.

PART A

Why is it coming here – what decision is required?

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council's Regulatory Committee ("the Panel"). The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded. The purpose of this investigation is to establish what public rights, if any, already exist even though they are not currently recorded on the Definitive Map and Statement of Public Rights of Way.
2. To consider an application attached at Appendix A from Staffordshire Moorlands Bridleways Group for an Order to modify the Definitive Map and Statement for the District of Staffordshire Moorlands. The effect of such an Order, should the application be successful, would:

(i) Upgrade Public Footpath No. 56 Cotton Parish to Public Bridleway status on the Definitive Map and Statement of Public Rights of Way under the provisions of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. The line of the Public Footpath which is the subject of the application is shown highlighted and marked A-B on the plan attached at Appendix B.

3. To decide, having regard to and having considered the Application and all the available evidence, and after applying the relevant legal tests, whether to accept or reject the application.

Application details- Documentary evidence submitted by the applicant

1. The applicant has submitted in support of their claim evidence of a response from Staffordshire County Council in relation to an petition about a lack of bridleways in the county (copy attached at Appendix H), an extract from the Alton and Bradley in the Moors (Farley and Cotton Townships) Inclosure Award dated 1833 (copy attached at Appendix C), a copy of the Statement accompanying the draft Definitive Map (copy attached at Appendix D), a copy of a map "showing way other than a footpath" (copy attached at Appendix E), a copy of a map "showing the route as a RUPP" (copy attached at Appendix G), a copy of a 1 and a quarter mile OS map dated 1986 (copy attached at Appendix F) and an extract from the case Kind and Others v Secretary of State for the Environment Food and Rural Affairs (copy attached at Appendix I).

Evidence submitted by the Landowners

2. Landowner 1 responded to the application by completing an owner/occupier evidence form dated 10 December 2018. A copy is attached at Appendix J.
3. They state that they consider the route to be a public footpath and there are County Council footpath signs at either end of the route. They spoke to a footpath ranger several years ago who advised that the route was not a bridle path but a footpath. The ranger advised to erect gates at either end of the route, with a stile for walkers, as the landowner was experiencing problems with people on motorbikes using the path.
4. They go on to say that in places the path is not wide enough for horses and there is a dangerous bridge near to where the old railway/tramline is.
5. They have only seen one person using the route on horseback and this is the applicant. They advised that they told the applicant that the path is not a bridleway, and they were unhappy when they saw the applicant take a chainsaw and cut branches out to widen the path.
6. Landowner 1 concludes that they have given the owner of Whiteheath Cottage, permission to use the route as this is an access route to their property.

7. An owner/occupier evidence form was received from Landowners 2, dated 10 December 2018. A copy is attached at Appendix K.
8. They advise that they consider the route to be public as a footpath and the route is signposted as a public footpath. They confirm that their land is used for grazing animals, and they have never seen people using the way.
9. Whilst it is not our intention to belittle any legitimate concerns raised, the courts have decided that issues relating to safety, security, privacy, suitability, future maintenance, and wildlife concerns cannot be taken into consideration. Only evidence regarding the existence or not of a public right of way can be taken into consideration.

Comments received from statutory consultees

10. Staffordshire Moorlands District Council responded to the application via e-mail on 19 December 2018 stating that in this case it looked to be a matter of legal fact. They have not commented further.
11. Cotton Parish Council responded by e-mail on the 6 December 2018, advising that the landowner does not want the route to be a bridleway. They further state that the route was originally for access to a cottage and farm and has never been a bridleway. The footpath is boarded by low hanging trees and bushes, and it would require major work to turn the route into a bridleway, which would create an unfair financial burden to the owner. Halfway along the footpath there is a stone bridge over the 1847 tramway, the bridge was built with a parapet on one side of 50cm and the other side of 70cm with a tramway below of just over 7 metres. This would be very unsafe for horse riders and cyclists. Therefore, Cotton Parish Council do not support the application.
12. The British Horse Society have replied stating that they have no evidence to put forward, but they do support the application.
13. The Ramblers Association, Peak & Northern Footpath Society and Open Spaces Society replied stating that they have no evidence for or against the claim, but they do support the claim.
14. The Byways and Bridleways Trust responded stating that as the route was initially classified as a RUPP, following the case of Hood, the route should not have been downgraded to a footpath. They advised that in the 1970's and 1980's the route was regularly used by motorcyclists. They support the route having bridleway status.
15. Copies of correspondence from the statutory consultees can be found at Appendix L.

Analysis of Documentary Evidence

16. Inclosure Award evidence

17. Inclosure Acts were designed to enclose the old commons, manorial waste and smaller holdings to increase agricultural productivity. There were

private local and general Inclosure Acts. The local Inclosure Acts were limited in application and were specific to one area.

- 18.** Officers went to the local Records Office and viewed the Alton and Bradley in the Moors (Farley and Cotton Townships) Inclosure Award dated 1833. The Award refers to Cotton Green Road, which is a route running along the same line as the alleged route and it is referred to in the following way: "Cotton Green Road 15 feet wide on Plan II".
- 19.** The first General Inclosure Act was made in 1801 and it was intended to standardise the clauses used in Inclosure Acts. These standard clauses and procedures were to be referred to or included in local acts. Unless specifically excluded in a local act the provisions of the general acts were to be treated as included.
- 20.** The local Inclosure Act empowered an inclosure commissioner to survey and divide up the land, allotting it to named individuals, including the setting out of highways. After all the procedures were followed and completed the commissioners would issue the final Award and accompanying Award Map. The Inclosure Commissioners had to follow laid down procedures to ensure their actions were legal. If they had not then the Award itself, and its provisions, would not be valid. The Act either laid down the powers of the Inclosure Commissioners in relation to highways, both public and private, or made reference to the general act. They may have been able to create, divert, stop up and list existing routes as well as determining who was liable for their maintenance.
- 21.** The preamble to the 1833 Award states that the Earl of Shrewsbury is the "Lord of the Manor of Alton and Cotton". The preamble refers to the General Inclosure Act of 1801 and two commissioners, William Blount and Charles Heaton were appointed "for valuing, dividing, allotting and inclosing the said Commons and Waste Grounds...provided for by this Act". The preamble gave the Commissioners the power to alter roads, including, "any public highways, or highway, bridle roads, road, or bridle road, footways, or footway... may in their judgement by diverted or turned with convenience to the public... or to be stopped up and discontinued". The preamble further sets out that the commissioners had the power to create new routes.
- 22.** The Award map would often use pre-existing highways to assist in orientating the land allotted. In some instances they would also connect any new highways set out in the award to existing routes. If a newly set out public highway was connected to an existing route it may support the contention that public rights, of at least similar status, exist over the latter. The Award map depicts Cotton Green Road as two lines running parallel, with one line an unbroken line and the other line broken. Where the line is broken would suggest that the route was unfenced on this side. The route also runs over allotment 131. The route connects to Kingsley and Ruehill Turnpike Road to the north and to Cotton and Ipstones Road to the south. The route is uncoloured and is depicted as a minor carriageway in comparison to the two routes it connects to in the north and south.

23. Cotton Green Road comes under the section "Occupation Roads" within the Award. The description for Cotton Green Road is: "branching out of the Cotton & Ipstones Road and continuing in a northerly direction over No 131 into the Kingsley & Ruehill Turnpike Road", it further goes on to say: "set out the said Road for the use of the owners and occupiers of Estates in the township of Cotton" and furthermore: "Road shall be supported and kept in repair by the occupiers of the adjoining lands out of No 131".
24. The fact that Cotton Green Road is recorded as being an occupation road would suggest that the route would not be used by members of the public at large because the term "occupation road" was typically used to describe a route that was used for the benefit of occupiers of adjoining properties and therefore not to be used as a public highway. Occupation roads were often constructed as a result of Inclosure Acts and were designed to provide access for landowners to their allotments. This is supported by the text of the Award, which states that the "road is for the use of the owners and occupiers of Estates in the township of Cotton" and the road would be "kept in repair by the occupiers of the adjoining lands out of No 131". This would suggest that the road was to be used by people living within the adjoining land and town and it was not considered that it was for the public at large to take on maintenance responsibilities for the route, therefore suggesting that the route was private and not a public highway.
25. The fact that the route is referred to as an occupation road would suggest that it was capable of being used by carts and carriages and people on horseback but these would be private rights, therefore the Inclosure Award evidence does not support public bridle rights.
26. **1 and a quarter mile OS map dated 1986**
27. The purpose of Ordnance Survey Maps is to show physical features on, and the contours of, the ground. In so doing they included all manner of ways from tracks leading only to remote properties, footpaths crossing fields, as well as the main highways. In this case the map shows a route running along the same line as the alleged route, which appears to be a broken single line. There is no key with the map so nothing to indicate the status of the route or the nature of any rights over the route.
28. Therefore, at best this map supports the physical existence of the route but this has already been determined, as the route is already recorded on the Definitive Map as a public right of way.
29. **Maps**
30. The map recorded as "map showing way other than a footpath" shows a route running along the same line as the alleged route as two solid lines, although it is not depicted as a main carriageway. The map also shows several routes with the annotation FP. The alleged route is not depicted in the same way as those routes with the annotation FP running alongside them. This would suggest that the route was not classified as a footpath. However, there is nothing to indicate the actual status of the route or the nature of any rights over the alleged route.

31. With regards to the map recorded as “map showing way marked as a RUPP” the map shows the alleged route marked number 56 and running along the same line as the alleged route. Similarly, to the other map there are several routes shown as a single dotted line with the annotation FP alongside them. There is no annotation along the alleged route and it is not depicted in the same way as the routes with the annotation of FP alongside them. The route is depicted as two solid lines, with a black single line with arrow symbols running along it, supporting the routes status as a Road Used as a Public Path. As the map depicts the route as a RUPP it supports the route being capable of being used by vehicles but it is most likely to have been used by the public on foot or horseback.

32. Statement accompanying the draft Definitive Map

33. Similarly, the statement accompanying the draft Definitive Map refers to the alleged route as “RP”- Road Used as a Public Path. Again, supporting that the route could be used by the public with vehicles but it was mainly used by the public on foot and horseback. This evidence is suggestive of the route being capable of being used as a bridleway and that members of the public could use it on horseback but as detailed further in the report the classification of RUPP proved unsatisfactory as a term in identifying the exact nature of any specific public rights over a route.

34. Background to the Definitive Map and Parish Survey evidence

35. The 1949 National Parks and Access to the Countryside Act introduced the concept of the Definitive Map and Statement of Public Rights of Way. These documents were intended to be conclusive legal evidence of the existence of what might be termed minor public highways. From the documents provided the alleged route was originally classified as a RUPP (Road used as a Public Path), as part of this process.

36. The unsatisfactory classification of the 1949 Act was addressed in the 1968 Countryside Act, which stated that all RUPPs should be reclassified as a footpath, bridleway or a new category, Byway Open to All Traffic.

37. Staffordshire County Council prepared its First (General) and Special Review of the Definitive Map in 1969. This review was completed in 1988. As a result of this review, a number of objections were raised regarding the reclassification of some routes. A series of hearings were held and where the objection related to the reclassification of a RUPP the guidelines laid down as a result of the Hood decision were followed. The decision in the Hood case was that RUPPs could not be reclassified as having public rights lower than bridleway unless there was evidence to the contrary. As the court concluded *in the absence of new evidence to the effect that the public had no right of bridleway over the path, an authority is bound to classify the path as a “bridleway” rather than a “footpath”*.

38. Subsequently, the reclassified RUPPs which were the subject of these objections were shown on the Definitive Map as bridleways. All other RUPPs which had been reclassified as footpaths and not objected to were shown and designated as such on the Definitive Map and Statement at the completion of the First and Special Review in 1988.

39. As a result of the review brought about by the 1968 Act, path 56 must have been reclassified as a footpath, hence why it is currently recorded as a Public Footpath on the Definitive Map. It would appear that no objections were raised to the reclassification of the route during the First and Special Review, which concluded in 1988. It is under the Section 53 process that the classification of the route has come into question.
40. The contention that a reclassified RUPP would support evidence of actual bridle rights is on its own insufficient.
41. The correct approach to the issue of RUPPs reclassified as footpaths is outlined in *Trevelyan v Secretary of State for the Environment* [2002] 2 PLR 49 where Latham J stated that the relevant question is posed by Section 53(3)(c): *is there evidence, which when considered with all other evidence, shows the correct classification of a way. This would involve a "careful evaluation" of all of the available evidence to determine, on the balance of probabilities, the correct status of the way.* He went on to say *"it seems to me that there is no room for any assumptions or presumptions. The Act specifically refers to evidence... the fact of the inclusion of the right of way on the Definitive Map is obviously some evidence of its existence. But the weight to be given to that evidence will depend on an assessment of the extent to which there is material to show its inclusion was the result of inquiry, consultation, or the mere ipse dixit of the person drawing up the relevant part of the map..."*.
42. The relevance of the fact that a way was previously shown as a RUPP does not mean that the way should automatically be classified as a bridleway.
43. As Lord Purchas commented in the case of *R v Secretary of State for the Environment ex parte Simms and Burrows* [1990] 3 All ER 490 the purpose of Section 53 is to ensure that the map is *"capable of revision of all kinds in order to ascertain the true state of affairs on the ground"*. Accordingly, the Surveying Authority should investigate all available evidence to address the correct status of the route.
44. However, the effect of reclassification does not extinguish bridleway rights. In the case of *R v Secretary of State for the Environment ex parte Riley* (1990) 59 P&CR 1 it was held that a reclassification of a RUPP to a bridleway did not have the effect of extinguishing vehicular rights. By extension the same must be true for a reclassification to footpath; any higher rights, such as bridleway, which can be proven to exist have not been extinguished.
45. Officers obtained the Parish Survey Card for Public Footpath No 56. In relation to the path symbol on the card, it appears that it originally said "CRF" but the C appears to have been crossed out and the P changed to an F, which means that the path symbol reads "RP", which stands for Road Used as a Public Path. Under the section, "Grounds for believing path to be public", it states: "over 40 years personal knowledge. Unmetalled road over bridge over disused train line". A copy of the Parish Survey Card is attached at Appendix M.

- 46.** As already stated, Roads Used as Public Paths was a category of right of way set out in the National Parks and Access to the Countryside Act 1949, which included ways such as public carriage roads, cart roads, or green unmetalled lanes which were mainly used as footpaths or bridleways. As part of the 1949 Act councils were required to complete parish survey cards and they were issued with guidance to assist in their surveys. Included in this advice were the acronyms CRB and CRF. The definitions given for these acronyms was "highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways" or "a public carriage or cart road or green unmetalled lane mainly used as a footpath or bridleway". The use of these acronyms led to entries on survey cards which could not be used on the definitive map and statement. This led to many routes being included on the Definitive Map and Statement as RUPP's. Even with the use of the symbols the type of rights appertaining were not easily identifiable; the notation could just as well be a descriptive term for the path's appearance rather than a reference to any rights enjoyed. Whilst these terms were useful as descriptions neither had any legal standing nor were suitable for inclusion on the Definitive Map and Statement. The unsatisfactory classification was addressed in the 1968 Countryside Act which stated all RUPP's should be reclassified as footpath, bridleway or a new category Byway Open to all Traffic.
- 47.** The fact that the route is referred to as a RUPP and a road shows that the route was capable of being used by vehicles but that it was most likely to have been used by people on foot and horseback. The description in the card does not provide much information regarding the legal rights over the route and evidentially this is not a strong piece of evidence on its own, although it is supportive of the route being capable of having bridle rights.
- 48. Case of Kind v Secretary of State**
- 49.** The case of Kind v Secretary of State for the Environment Food and Rural Affairs makes reference to the Riley case and whilst the case does confirm that there was no provision in the 1968 Countryside Act for the extinguishment of higher rights, the case reiterates what is stated in the case of Riley, in that there has to be evidence to show that certain public rights existed over an alleged way to begin with and if this can be shown then any rights that have been proven to exist cannot be extinguished.
- 50.** Therefore, the issue is whether the evidence provided shows that bridleway rights have ever specifically existed over the alleged route. This piece of evidence does not provide any specific evidence regarding the rights over this specific route. Case law has established that it is not enough that a route was previously classified as a RUPP that it should automatically become a bridleway but the evidence needs to be looked at as a whole. Therefore, this piece of evidence is evidentially weak in establishing what rights exist over the alleged route.
- 51. E-petition- bridleways in Staffordshire**
- 52.** The response from Staffordshire County Council in relation to the e-petition about the lack of bridleways in Staffordshire does not provide any

evidence either in support or against the application and does not provide any evidence as to the nature of any rights over the alleged route. The response merely outlines the Council's process for classifying routes dating back from when the National Parks and Access to the Countryside Act 1949 was introduced. It explains that over time, routes have had to be reclassified but it does not state that the Council's process for classifying routes has been fundamentally wrong, despite conceding that the county falls below the national average for the number of routes it has for horse riders and cyclists.

- 53.** The response details how the council is trying to provide routes for horse riders, but this is not relevant to the section 53 process. Therefore, this document does not provide any supporting evidence as to the nature of any public rights over the alleged route.

Comments on report

- 54.** Following circulation of the report, comments and further evidence were received from the applicant. Copies of their correspondence and officers' response is attached at Appendix N. The applicant disagrees with officers' interpretation of the Inclosure Award. Officers have viewed the Inclosure Map and the route is coloured white, the route is not coloured as other main routes are depicted on the map. Footpaths are depicted on the map as a single broken line, which the alleged route is not. The applicant states that the Inclosure Award evidence supports the route being public, however, officers' opinion remains that the evidence points more to private rights rather than public rights.
- 55.** The applicant has made further comments regarding the maps that have been submitted and the parish survey evidence, however, officers' analysis of this evidence remains unchanged as outlined in the main body of the report.
- 56.** The applicant also refers to a Tithe Map. Tithe documentation was not submitted with the original application. Officers have reviewed the Alton, Cotton township map dated 1843 via the Records Office digitised records. The map shows part of the alleged route, that being the very northern section of the route but it does not show the entirety of the route. The route is depicted as two broken lines and then the route forms part of plot 580. On review of the Award, plot 580 is in the ownership of the Earl of Shrewsbury and the plot name is "Common Piece and or Lane". The term "lane" is generic and provides no information regarding the nature of any rights over the route. There is nothing to indicate whether the route is public or private. Overall, the tithe evidence is weak in providing supporting evidence that the alleged route has public bridle rights over it.
- 57.** Whilst the comments and further evidence from the applicant have been noted officers' recommendation remains unchanged.
- 58.** Comments were also received from Cotton Parish Council advising that they remain opposed to the upgrade of the route subject to this application. They have stated that the section of the A52 where Public Footpath 56 ends

is a dangerous road and there have been many accidents and therefore upgrading the route to a public bridleway would be unsafe. As already stated in the report issues regarding safety cannot be taken into consideration when considering whether a public right of way exists.

- 59.** Correspondence was also received by Landowner 2 confirming their objection to the application. They advised that they have never seen anyone walking the signposted footpath. They have also stated that they graze cattle on their land and they are concerned that horses may scare the cattle. They have further advised that the footpath is situated on a bend, which leads directly onto the A52, which carries a large amount of HGV's to and from the nearby quarry and cement works. Whilst these comments are noted as previously outlined this cannot be taken into consideration when determining whether the public right of way exists or not.

Legal tests

- 60.** With regard to the status of the route, the burden is on the applicant to show, on the balance of probabilities, that it is more likely than not, that the Definitive Map and Statement are wrong. The existing classification of the route, as a footpath, must remain unless and until the Panel is of the view that the Definitive Map and Statement are wrong. If the evidence is evenly balanced then the existing classification of the route as a footpath on the Definitive Map and Statement prevails.

Summary

- 61.** The application is made under Section 53(2) of the 1981 Act, relying on the occurrence of the event specified in 53(3)(c)(ii) of the Act. Therefore, the Panel needs to be satisfied that, on the balance of probabilities, the evidence that has been discovered shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
- 62.** When considering an Inclosure Award the wording, powers and context all have to be taken into consideration to determine its evidential value. Any extract should not be evaluated on its own but rather considered with the remainder of the Award and enabling Act. An Inclosure Award has been determined by the courts to be conclusive evidence in respect of public highways in the absence of later legal events.
- 63.** The Inclosure Award documentation clearly sets out the alleged route and it is clear from the preamble that the commissioners had the authority to create new routes. However, the alleged route is depicted as an occupation road and therefore the main purpose of the route was to serve the local owners and occupiers rather than being for the public at large and therefore not being a public route with bridle rights.
- 64.** The evidential value of maps is limited to supporting evidence of the physical existence of a way. The existence of the way is not in dispute as

the route is an existing public right of way. The maps are of limited value in showing the nature of the rights over the alleged route.

- 65.** The Statement accompanying the draft Definitive Map and the parish survey card for Public Footpath 56 all refer to the route as a RUPP, which is supportive that the route was capable of being used as a bridleway but it is not strong evidence when determining the exact rights over the alleged route.
- 66.** There is no one piece of evidence that strongly supports the contention that bridle rights exist over the alleged route. When the evidence is reviewed in totality, there is no overt evidence that bridle rights exist over the alleged route and therefore that the route should be classified as a public bridleway.

Conclusion

- 67.** The question is not whether Public Footpath 56 is a public highway but rather what is the nature of the public rights over the route.
- 68.** The evidence to overturn the current designation on the map must satisfy the civil legal test, that of the balance of probabilities.
- 69.** In light of the evidence, as set out above, it is the opinion of your officers that based upon the balance of probabilities the route which is the subject of the application is more likely than not a public footpath.
- 70.** It is the opinion of your officers that the County Council should not make a Modification Order to upgrade the route to bridleway status on the Definitive Map and Statement of Public Rights of Way.

Recommended Option

- 71.** To reject the application based upon the reasons contained in the report and outlined above and to decide to not make an Order to upgrade the alleged route to the Definitive Map and Statement of Public Rights of Way.

Other options Available

- 72.** The Panel has the authority to reach a different decision and therefore can accept the application to make an Order to upgrade the alleged route to the Definitive Map and Statement of Public Rights of Way.

Legal Implications

- 73.** The legal implications are contained within the report.

Resource and Financial Implications

- 74.** The costs of determining applications are met from existing provisions.

75. There are, however, additional resource and financial implications if decisions of the Registration Authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

Risk Implications

76. In the event of the Council making an Order any person may object to that order and if such objections are not withdrawn the matter is referred to the Secretary of State for Environment under Schedule 15 of the 1981 Act. The Secretary of State would appoint an Inspector to consider the matter afresh, including any representations or previously unconsidered evidence.

77. The Secretary of State may uphold the Council's decision and confirm the Order; however there is always a risk that an Inspector may decide that the County Council should not have made the Order and decide not to confirm it. If the Secretary of State upholds the Council's decision and confirms the Order it may still be challenged by way of Judicial Review in the High Court.

78. Should the Council decide not to make an Order the applicants may appeal that decision under Schedule 14 to the Secretary of State who will follow a similar process to that outlined above. After consideration by an Inspector the County Council could be directed to make an Order.

79. If the Panel makes its decision based upon the facts, the applicable law and applies the relevant legal tests the risk of a challenge to any decision being successful, or being made, are lessened. There are no additional risk implications.

Equal Opportunity Implications

80. There are no direct equality implications arising from this report.

J Tradewell

Director for Corporate Services

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Background File: 017021

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